

EXHIBIT 5

Deposition Transcript of Kevyn Orr from August 30, 2013

***(Objectors' designations highlighted in yellow;
City's counter-designations highlighted in blue)***

In The Matter Of:

City of Detroit

Kevyn Orr

August 30, 2013



Bingham Farms/Southfield • Grand Rapids
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Original File ORR_KEVYN.txt
Min-U-Script® with Word Index

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<p>1 UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 In Re:</p> <p>6</p> <p>7 City OF DETROIT, MICHIGAN Chapter 9</p> <p>8 Case No.13-53846</p> <p>9 Debtor. Hon. Steven Rhodes</p> <p>10 /</p> <p>11</p> <p>12</p> <p>13 The Videotaped Deposition of KEVYN ORR,</p> <p>14 Taken at 1114 Washington Boulevard,</p> <p>15 Detroit, Michigan,</p> <p>16 Commencing at 8:32 a.m.,</p> <p>17 Friday, August 30, 2013,</p> <p>18 Before Cindy Mendenhall, RPR, CSR-5220.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 VINCENT J. MARRIOTT III</p> <p>2 Ballard Spahr LLP</p> <p>3 1735 Market Street</p> <p>4 51st Floor</p> <p>5 Philadelphia, Pennsylvania 19103</p> <p>6 215.665.8500</p> <p>7 Appearing on behalf of EEPK.</p> <p>8</p> <p>9 STEPHEN HACKNEY</p> <p>10 LALLY GARTEL</p> <p>11 Kirkland & Ellis, LLP</p> <p>12 300 North LaSalle</p> <p>13 Chicago, Illinois 60654</p> <p>14 312.862.2157</p> <p>15 Appearing on behalf of Syncora.</p> <p>16</p> <p>17 JENNIFER GREEN</p> <p>18 FRANK GUADAGNINO</p> <p>19 Clark Hill, P.L.C.</p> <p>20 500 Woodward Avenue, Suite 3500</p> <p>21 Detroit, Michigan 48226</p> <p>22 313.965.8300</p> <p>23 Appearing on behalf of Police and Fire Retirement</p> <p>24 System and Police and Fire General Retirement System.</p> <p>25</p>
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1 Q. My name is Steve Hackney. I'm an attorney at Kirkland
2 & Ellis and I represent Syncora Capital Assurance and
3 Syncora Guarantee. It's Nice to meet you.
4 A. Nice to meet you.
5 Q. Could you state your name for the record?
6 A. Sure. Kevyn Dwayne Orr.
7 Q. Mr. Orr, you understand the way a deposition works,
8 right?
9 A. I think I do.
10 Q. In fact, you have taken depositions in your career;
11 isn't that correct?
12 A. I have.
13 Q. If I ask a question that isn't clear, will you ask me
14 to rephrase it?
15 A. Yes.
16 Q. And if I ask a question and you answer it, I'm going
17 to assume that you understood it; is that fair?
18 A. Yes.
19 Q. Mr. Orr, in the course of negotiating and executing
20 the forbearance agreement, did you receive legal
21 advice?
22 A. Yes. The forbearance and the optional payment
23 agreement?
24 Q. That's right.
25 A. And we'll refer to that as forbearance agreement going

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1 Detroit, Michigan
2 Friday, August 30, 2013
3 8:32 a.m.
4
5
6 VIDEO TECHNICIAN: We are now on the
7 record. This is the videotaped deposition of Kevyn
8 Orr being taken on Friday, August 30th, 2013. The
9 time is now 8:32 a.m. We are located at
10 1114 Washington Boulevard, Detroit, Michigan. We are
11 here in the matter of In Re: City of Detroit,
12 Michigan, case number 13-53846 in the United States
13 Bankruptcy Court of the Eastern District of Michigan.
14 My name is Bailey Wellman, video
15 technician. Will the court reporter swear in the
16 witness.
17 KEVYN ORR,
18 was thereupon called as a witness herein, and after
19 having first been duly sworn to testify to the truth,
20 the whole truth and nothing but the truth, was
21 examined and testified as follows:
22 EXAMINATION
23 BY MR. HACKNEY:
24 Q. Mr. Orr, good morning.
25 A. Good morning.

1 forward?
2 Q. I was going to call it that because it's shorter, if
3 that's okay.
4 A. Sure. That's fine.
5 Q. But you're right. That's what I mean.
6 A. Yes. Yes, I did receive legal advice.
7 Q. And did you receive legal advice from the City's law
8 department on the subject?
9 A. I don't recall. I don't think so.
10 Q. Did you receive legal advice from Jones Day on the
11 subject?
12 A. Yes, among others.
13 Q. And I take it that you relied on the legal advice you
14 received in making the decision to execute the
15 forbearance agreement?
16 A. Legal advice and business advice from our consultants,
17 yes.
18 Q. Who were the others that you obtained legal advice
19 from?
20 A. May have obtained legal advice from our local counsel.
21 Q. Ah, yes.
22 A. And in fact I said I don't recall if I obtained any
23 legal advice from the corporation counsel's office. I
24 just don't recall, so I'm not going to speculate.
25 Q. Three possible. You know you got legal advice from

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1 Jones Day.
2 **A. Absolutely.**
3 Q. You may have or did from local counsel.
4 **A. Yes.**
5 Q. And you can't recall whether you did from the City's
6 law department.
7 **A. Yes.**
8 Q. Are you waiving the attorney-client privilege in
9 connection with the motion to assume the forbearance
10 agreement?
11 **MR. SHUMAKER:** Objection, could call for
12 the revelation of attorney-client communication.
13 You can answer the question, but yes or no.
14 **A. No.**
15 **BY MR. HACKNEY:**
16 Q. If I ask you questions regarding the legal advice
17 rendered to you in connection with the forbearance
18 agreement's negotiation or execution, you will refuse
19 to answer those questions on the grounds of the
20 attorney-client privilege; is that correct?
21 **MR. SHUMAKER:** If you're asking what the
22 advice is, certainly. The communications between
23 counsel and what he was -- what he was advised on,
24 certainly.
25 **THE WITNESS:** Right.

1 factors were considered by Mr. Orr, but obviously if
2 you're going to ask what he was -- what he was advised
3 by counsel, then I'm going to instruct him not to
4 answer.
5 **A. When I say more than likely, that's -- that's exactly**
6 **the distinction that I'm trying to make. Did I have**
7 **discussions with my counsel? Yes. Did those**
8 **discussions take into consideration some of those**
9 **factors? Yes. Am I going to tell you what those**
10 **discussions were and what, if any, conclusions were**
11 **made? No.**
12 **BY MR. HACKNEY:**
13 Q. Okay. Fair enough.
14 On July 15, 2013, the City entered into
15 what we're going to call the forbearance agreement
16 with the Swap counterparties and the service
17 corporations; is that correct?
18 **A. Yes.**
19 Q. When did negotiations around that agreement with the
20 Swap counterparties begin after your appointment?
21 **A. I think there were discussions about negotiations**
22 **almost immediately after my appointment. My specific**
23 **knowledge -- when you say negotiations, what do you**
24 **mean?**
25 Q. Well, let me -- let me ask it a different way, which

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Page 16

1 **BY MR. HACKNEY:**
2 Q. Okay. That's correct?
3 **A. Yes. That is correct.**
4 Q. So if I ask you what your view is on the likelihood
5 that the City's Swap and validity arguments will
6 prevail, you will assert the attorney-client
7 privilege; is that correct?
8 **A. Yes, more than likely.**
9 Q. If I ask you your view on the likelihood that the
10 pledge of the gaming revenues under the Michigan
11 Gaming Act is an invalid pledge, you'll assert the
12 attorney-client privilege, correct?
13 **A. Yes, more than likely.**
14 Q. If I ask you questions regarding the likelihood that
15 the City would prevail on a claim or defense against
16 the Swap counterparties, you'll assert the
17 attorney-client privilege, correct?
18 **A. Yes, more than likely.**
19 Q. And I guess I gotta clarify. When you say more than
20 likely, I mean are you asserting the privilege with
21 respect to those types of questions? I'm trying to
22 save having to --
23 **A. Sure.**
24 **MR. SHUMAKER:** Let me state for the record
25 you can ask questions as to whether those -- those

1 is isn't it true that Mr. Buckfire was the lead
2 negotiator for the City on the business terms of what
3 became the forbearance agreement?
4 **A. Yes.**
5 Q. And Mr. Buckfire has testified that the negotiations
6 in earnest regarding what became the forbearance
7 agreement were conducted between June 4th and
8 June 11th of 2013?
9 **A. I don't recall those specific dates, but I think**
10 **that's the right time frame. Let me -- let me try to**
11 **be as clear as I can so we can move on. We began**
12 **talking, discussing ways with my advisors, without**
13 **discussing what we discussed, to provide the City with**
14 **liquidity almost immediately upon my appointment. The**
15 **negotiations that you're referring to I believe did**
16 **occur within that time frame.**
17 Q. Okay. So you don't have a basis as you sit here today
18 to contradict Mr. Buckfire's recollection of when the
19 key negotiations over the business terms of the
20 forbearance agreement were conducted?
21 **A. No. It might be earlier, but that's the approximate**
22 **time frame.**
23 Q. And as he was the lead negotiator, he's probably the
24 guy who would know, right?
25 **A. Sure, absolutely.**

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1 Q. Okay. And you did not participate directly in those
2 negotiations; isn't that correct?
3 A. No. No. I did participate at some point in June
4 with -- I had no face-to-face meetings, but there were
5 several phone calls with a principal on the other
6 side.
7 Q. Do you remember when those phone calls took place?
8 A. I do not remember the exact date. I believe those
9 calls took place in the first and second week of June
10 prior to the June 14th creditor's meeting.
11 Q. Okay. And what was the substance of those calls?
12 A. The nature of the proposed settlement and the amount
13 of the discount.
14 Q. And who were you talking to?
15 A. I don't remember. A Mr. Kuderic (phonetic)? There
16 was one individual, and perhaps others on a conference
17 call that Ken and I -- Ken and I had, Ken Buckfire and
18 I had. One or two conference calls the first week of
19 June and then perhaps another couple of conference
20 calls the second week of June.
21 Q. And this was prior to an agreement in principle being
22 struck?
23 A. Yes. Yes. Yes.
24 Q. Okay. And tell me what was said on these conference
25 calls if you can divide them in your mind.

1 anything out from these conversations.
2 A. No. I'm -- I'm trying to relay to you that there
3 were -- there were some very difficult discussions the
4 first week on a series of conference calls.
5 Negotiations broke down and that first week we walked
6 away believing that the concept of the settlement
7 wasn't going to work. I came away with a very sincere
8 feeling that it wasn't going to work.
9 Those negotiations started again. It may
10 have even started over the weekend, but they started
11 the second week. They broke down again. There was a
12 conference call where we -- the parties hung up
13 without having reached an agreement. Then I believe
14 later -- the afternoon, and it may have been the
15 11th -- I said it was the second week -- there were a
16 series of calls going back and forth where the actual
17 terms of the discount and the framework for the
18 settlement was finally hammered out.
19 Q. Okay. Can you dial in with any more specificity the
20 dates that these calls took place?
21 A. Like I said, the first of -- it is consistent with my
22 memory that, yes, we started around the June 4th time
23 frame. As I said, there was a weekend. June 10th was
24 my public meeting, so June 11th is entirely reasonable
25 as the date that we finally reached an agreement.

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1 A. Generally speaking, without violating confidential
2 settlement negotiations, we were talking about the
3 amount of the discount for the optional termination
4 payment. At several points discussions broke down and
5 the parties pledged to keep the lines of communication
6 open, but felt that there may not be a settlement.
7 I actually, several times, came away
8 believing there was not going to be a settlement. I
9 think there was a -- without running on, I think a
10 weekend transpired, and then negotiations began anew
11 the second week. Those negotiations broke down a time
12 or two, and then eventually I believe an agreement in
13 principle was reached at some point that week.
14 Q. If Mr. Buckfire testified there was an agreement in
15 principle by June 11th of 2013, does that sound
16 correct to you?
17 A. Yes, the second -- yes. Yes, it does.
18 Q. Now, you prefaced your answer without divulging
19 confidential settlement communications, and I'll tell
20 you that Rule 408 doesn't actually make your
21 settlement communications privileged, and I mean from
22 discovery it may have implications for admissibility
23 at trial.
24 A. Yes.
25 Q. So I want to make sure that you're not leaving

1 Q. Okay. Do you maintain a calendar that would reflect
2 any of these calls or dates?
3 A. No. Because they were very much off the cuff and ad
4 hoc and they were not -- my calendar is more of a
5 formal process where it has to go through my
6 administrative assistant and it's put in, and then I
7 either accept or deny it, and I don't have any of
8 these calls basically because it was very quick and it
9 was very dynamic and as I said, they actually broke
10 down several times.
11 Q. Would you agree that, notwithstanding your involvement
12 in these calls with the Swap counterparties, it's
13 still fair to characterize Mr. Buckfire --
14 A. Yes.
15 Q. -- as the lead negotiator for the City?
16 A. Yes.
17 Q. Using Mr. Buckfire's recollection of June 4th as kind
18 of the kickoff of these negotiations which you don't
19 have a basis to --
20 A. No.
21 Q. -- contradict --
22 A. Not at all.
23 Q. -- I'd like to kind of level set where you were at
24 going in to June 4th. Okay?
25 Your assumption prior to June 4th was that

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1 the Swap counterparties could unilaterally --
 2 unilaterally terminate the Swap, correct?
 3 **MR. SHUMAKER:** Objection, form.
 4 **A.** Well, my understanding was the City -- there were a
 5 series of events which put the City in default. The
 6 consent agreement prior to my appointment, the consent
 7 agreement, the declaration of a financial emergency,
 8 my appointment was an event of default. My
 9 understanding was that due to those multiple events of
 10 default, the counterparties had the ability to
 11 exercise their rights and deprive the City of much
 12 needed casino revenue.
 13 **BY MR. HACKNEY:**
 14 **Q.** We'll get to the casino revenue in a moment which is
 15 something that's trapped under -- potentially trapped
 16 under the collateral agreement, right?
 17 **A.** Right.
 18 **Q.** I want to talk about the Swap agreement which can lead
 19 to a large termination payment --
 20 **A.** Yes.
 21 **Q.** -- that the service corporations might owe.
 22 **A.** Yes.
 23 **Q.** And you understand the distinction between those two
 24 documents --
 25 **A.** Yes.

1 **Q.** Now, another one of your assumptions prior to June 4
 2 was that the Swap counterparties could also
 3 unilaterally trap cash under the collateral agreement,
 4 right?
 5 **MR. SHUMAKER:** Objection, form, calls for a
 6 legal conclusion.
 7 **A.** My understanding was that the Swap counterparties
 8 could instruct the custodian to exercise their rights
 9 to trap cash.
 10 **BY MR. HACKNEY:**
 11 **Q.** And that was one of the rights that they had as you
 12 were going into the negotiations with them, correct?
 13 **MR. SHUMAKER:** Objection, form, calls for a
 14 legal conclusion.
 15 **A.** My understanding -- yes. My understanding was that
 16 they had that right.
 17 **BY MR. HACKNEY:**
 18 **Q.** That's why you were negotiating with them, right?
 19 **A.** My -- we were negotiating with them to make sure that
 20 the City had access to the revenue that it needed
 21 quite badly and that the City would not suffer the
 22 imposition of a fairly significant termination
 23 payment.
 24 **Q.** Now, another one of your assumptions prior to June 4
 25 was that no other party could stop the Swap

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1 **Q.** -- right?
 2 **A.** Um-hm.
 3 **Q.** And your assumptions prior to the June 4th meeting
 4 were that as a result of these events of default under
 5 the Swap that occurred, some of them, prior to your
 6 appointment --
 7 **A.** Yes.
 8 **Q.** -- that the Swap counterparties could unilaterally
 9 terminate the Swap and demand a sizable payment from
 10 the service corporations, correct?
 11 **MR. SHUMAKER:** Objection, form, foundation.
 12 **A.** Yeah, my assumption was, my understanding was that,
 13 yes, they could terminate and demand a sizable
 14 payment, whether from the service corporations or
 15 eventually from the City. It would hit our bottom
 16 line, yes.
 17 **BY MR. HACKNEY:**
 18 **Q.** That's right because it ripples --
 19 **A.** Yes.
 20 **Q.** -- through the service corporations to the City by the
 21 service agreements, right?
 22 **A.** Yeah.
 23 **MR. SHUMAKER:** Objection, form.
 24 **A.** If that is in fact the process, yes.
 25 **BY MR. HACKNEY:**

1 counterparties from either terminating the Swaps or
 2 trapping cash, correct?
 3 **MR. SHUMAKER:** Objection, form, foundation.
 4 **A.** Yeah, my assumption was -- or, rather, my
 5 understanding was that the Swap counterparties had
 6 certain rights and that they had the ability to
 7 exercise those rights and remedies. Whether another
 8 party could, quote-unquote, stop them could depend on
 9 a number of different factors.
 10 **BY MR. HACKNEY:**
 11 **Q.** So was that something -- that was not something that
 12 you had considered then as of June 4th?
 13 **A.** Yes.
 14 **MR. SHUMAKER:** Objection, form.
 15 **A.** Yeah. We had considered whether or not there were
 16 perhaps other risks involved. What I'm saying to you
 17 is I had not, as you phrased the question, reached a
 18 conclusion as to whether or not someone would have the
 19 ability to stop them from exercising those rights.
 20 **BY MR. HACKNEY:**
 21 **Q.** Okay. So you considered the question, but you hadn't
 22 answered, in your money mind, whether or not there was
 23 a party out there that could stop the Swap
 24 counterparties from acting.
 25 **MR. SHUMAKER:** Objection, form.

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1 A. We believe that the Swap counterparties could act. I
2 think there's a series of letters subsequently with
3 discussion with your client about their lack of
4 ability to stop the Swap counterparties from acting,
5 but I'm -- what I'm trying to relay to you is we had
6 to assess whether they were risks to that, and my
7 understanding was that they had the right to exercise
8 their remedies.

9 BY MR. HACKNEY:

10 Q. Okay. Now, I want to also get a level set on your
11 objectives going into the negotiations, and I
12 understand that when I say you, I mean the City,
13 Mr. Buckfire, there are multiple parts --

14 A. My -- my team --

15 Q. That's right.

16 A. -- consultants.

17 Q. I may be a little euphemistic, but I'll try to be
18 precise at the right times.

19 A. That's fine.

20 Q. Okay.

21 MR. SHUMAKER: Steve, if I could just
22 object. If you could just define what you mean by
23 level set, I would appreciate that.

24 MR. HACKNEY: I want to go back in time --

25 MR. SHUMAKER: Okay.

1 Now, I'm going to ask about the City's
2 objectives in entering into the negotiations. Okay?
3 Objective one of the City was to get the
4 counterparties to waive their cash trap at least on an
5 interim basis to allow the City access to casino
6 revenues, correct?

7 A. I don't know if I would characterize it as objective
8 one. It wasn't as if we were trying to prioritize one
9 objective over the other. It was an objective to make
10 sure that the cash did not get trapped.

11 Q. Okay. So that was one of the objectives.

12 A. Yes.

13 Q. A second objective was that you wanted to modify the
14 Swap to get a discount on the termination amount,
15 correct?

16 A. Yes. That was certainly an objective, yes.

17 Q. Okay.

18 MR. SHUMAKER: Objection there to the
19 extent that it calls for a legal conclusion.

20 BY MR. HACKNEY:

21 Q. And the third was that you wanted to obtain an option
22 about when you could direct the termination of the
23 Swap, correct?

24 MR. SHUMAKER: Objection, calls for a legal
25 conclusion.

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1 MR. HACKNEY: -- to prior to the June 4
2 commencement of negotiations.

3 MR. SHUMAKER: Okay.

4 MR. HACKNEY: That's what I mean by level
5 set.

6 MR. SHUMAKER: Okay. Thank you.

7 BY MR. HACKNEY:

8 Q. Now, I'd like to ask about your objectives as you go
9 into the negotiation. Okay?

10 A. Um-hm.

11 Q. You understand that when you go into a negotiation
12 it's important to have an understanding of both the
13 financial realities that your party is -- is facing as
14 well as the legal realities that your party's facing,
15 correct?

16 A. Yes.

17 Q. That informs the negotiation, right?

18 A. In making an informed decision, I would say you want
19 to have an understanding of those factors.

20 Q. And you also want to understand what your counterparty
21 in the negotiation needs and wants are as well as
22 their potential legal rights, right?

23 A. What your counterparty negotiations perceived needs
24 and rights are.

25 Q. That's right. That's right.

1 A. Here again, I understand your characterization. I'm
2 going to say that that -- that is a fair
3 characterization without trying to quantify as one
4 objective is more important than the others, and let
5 me explain my answer.

6 The City was at risk of significant
7 reduction in cash flow at that period. I think at one
8 point there were various projections that showed as us
9 having as little as four or nine million dollars of
10 cash on hand in mid-June. In fact, sometime around
11 that period I heard that an employee of the City had
12 gone to cash their paycheck and the paycheck had
13 bounced. They came back in later that afternoon and
14 it cashed, but we were -- we were that precarious in
15 terms of our cash.

16 We knew we were at risk with regard to the
17 Swap agreement both for trapping casino revenue as
18 well as the termination payment. We also knew that we
19 would need to analyze what the right were -- rights
20 were and to have time to resolve that issue. So to
21 the extent your characterization of three objectives
22 encompasses those concepts, then that's a fair
23 characterization.

24 BY MR. HACKNEY:

25 Q. And I don't mean to order them, but -- so I won't

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1 focus on it. I just gave you them in an --
 2 A. Sure.
 3 Q. -- order.
 4 A. Right.
 5 Q. But those were three objectives of your negotiations,
 6 correct?
 7 A. I think it's fair to say that.
 8 Q. And you achieved those three objectives in the
 9 forbearance agreement, correct?
 10 A. We believe so.
 11 Q. Tell me what you and Mr. Buckfire discussed as he's
 12 going into the June 4 meeting. So what was his
 13 mission?
 14 A. Well, I'm trying to -- generally speaking, because
 15 some of these conversations may have occurred on phone
 16 calls where my attorneys were present, but generally
 17 speaking, the characterization of what you just talked
 18 about, getting a discount of the termination payment,
 19 making sure that the casino revenue wasn't trapped,
 20 getting time to find an alternative source of funding,
 21 making sure that the City had sufficient cash to
 22 commence some immediate reinvestment and public
 23 health, safety and welfare initiatives that we were
 24 focused on, all of those concepts were caught up in
 25 these discussions.

1 effective on the 25th to date regularly, daily, sure.
 2 Q. On this subject.
 3 A. Oh, sure. On the subject of freeing up cash, on the
 4 subject of alternatives, on the subject of relieving
 5 us from our obligations under the Swaps, we -- we --
 6 we have conversations regularly.
 7 Q. So going -- using the June 4th date, Mr. Buckfire goes
 8 into a negotiation in New York with the Swap
 9 counterparties, correct?
 10 A. As to the best of my knowledge -- I'll stick with
 11 June 4th, because you have told me that's what Ken
 12 said, and so I assume that's the date -- yes.
 13 Q. And whenever the date was, there was a first meeting
 14 that he took in person with the Swap counterparties,
 15 correct?
 16 A. Yes. To the best of my recollection, I believe it was
 17 a meeting.
 18 Q. What offer was he authorized to make in that meeting,
 19 if any?
 20 A. I don't recall if there was a specific offer in that
 21 meeting. I think our discussions centered around
 22 getting the best deal we could. We may have discussed
 23 trying to even have the potential termination --
 24 optional termination payment or more, so I don't think
 25 we had it as strict as, you know, your marching orders

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1 Q. Okay. So the way we described your objectives is a
 2 fair way to describe the marching orders that
 3 Mr. Buckfire had going in to the June 4 meeting.
 4 MR. SHUMAKER: Objection to form.
 5 A. Yeah, you know, marching orders -- I think that
 6 Mr. Buckfire, myself, our attorneys, the consultants
 7 and accountants reached a consensus.
 8 BY MR. HACKNEY:
 9 Q. About what the City should do?
 10 A. About what the City needed to do.
 11 Q. And what -- and that consensus was to try and achieve
 12 the three objectives we talked about earlier.
 13 MR. SHUMAKER: Objection to form.
 14 A. Here again, I'll stay by the concept that, you know --
 15 I understand for your purposes you're trying to
 16 characterize the three objectives, but the objectives,
 17 in my opinion, were quite broader. The efforts to try
 18 to achieve the objectives, as you call them, were
 19 necessary for some of the things, priorities the City
 20 needed to do.
 21 BY MR. HACKNEY:
 22 Q. Did you have any conversations with anyone else in
 23 advance of June 4 about the anticipated negotiations?
 24 A. Oh, sure. We -- we -- my -- my team and I have
 25 conversations from the time my appointment became

1 are to say do this and go in.
 2 It was to go in and have a discussion with
 3 the representatives of the counterparty about what we
 4 needed to get so that the City could function first
 5 with cash flow, not any priority, but also to get a
 6 discount over that termination payment.
 7 Q. So did Mr. Buckfire have authorization to make a
 8 formal proposal in the first meeting?
 9 A. Yes.
 10 Q. And to your knowledge did he make one?
 11 A. I believe so.
 12 Q. What was the proposal?
 13 A. I don't remember what the exact number was, but I
 14 believe the concepts were consistent throughout.
 15 Q. And what were the concepts?
 16 A. Same thing that we just said, to -- to try to get a
 17 discount over the termination payment, to try to make
 18 sure that the cash wasn't trapped, make sure we had
 19 some time to find a way to pay even the discounted
 20 amount.
 21 Q. Did Mr. Buckfire report back to you after the June 4th
 22 meeting about what had transpired?
 23 A. Yes.
 24 Q. What did he tell you transpired?
 25 A. Had a discussion. I don't have notes, but my general

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1 recollection is had a discussion with the
2 counterparties, discussed a range of alternatives, our
3 first overture was rejected, but we would have further
4 discussions.
5 Q. And do you remember whether they countered?
6 A. I don't remember specifically. I believe they may
7 have.
8 Q. Okay. Do you know the terms of their counter?
9 A. Generally in the same concept I said. If you're
10 looking for a number, for instance, we said 50 percent
11 and they came back with 98. I don't recall those
12 specifics.
13 Q. So you can't give me the bid and the ask --
14 A. Yeah.
15 Q. -- on what the Swap would be modified as far as the
16 termination?
17 A. Yes, that's correct.
18 (Discussion off the record at 8:56 a.m.)
19 (Back on the record at 8:56 a.m.)
20 BY MR. HACKNEY:
21 Q. Did the City enter into a nondisclosure agreement in
22 connection with these negotiations?
23 A. Yes, I believe so.
24 Q. With the Swap counterparties?
25 A. Yes.

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1 MR. HACKNEY: I think we would ask to see
2 if that could be produced. I know that there's not
3 formal written discovery, but the Court has also
4 indicated that all documents relating to the debtors
5 are effectively discoverable in bankruptcy, so I'd ask
6 that you consider that and we can address it later.
7 MR. SHUMAKER: We'll look into it.
8 BY MR. HACKNEY:
9 Q. Now the -- I know that -- I've established already
10 that you -- you don't have an independent recollection
11 of the specific dates any of this occurred. I'm
12 making representations to you as an officer who was
13 here yesterday.
14 A. Right.
15 Q. So subject to my representations being accurate,
16 Mr. Buckfire's recollection was that the next meeting
17 in person with the Swap counterparties was June 8th.
18 A. That's sou -- as I said, there was a first week and
19 there was a second week and that sounds about
20 accurate. I believe June 8th may have been a weekend,
21 so as I said before some of these discussions may have
22 occurred over the weekend.
23 Q. Okay. So discussions had not broken down at this
24 point, correct?
25 A. No. They may have. I think they broke down at some

1 point during the first week, but they -- they resumed.
2 My interpretation was that they broke down, and then
3 they recommenced a second week.
4 Q. Okay. So on -- if there -- to the extent
5 Mr. Buckfire's right that there was an in-person
6 June 8th meeting --
7 A. Yeah.
8 Q. -- do you remember what his -- what your marching
9 orders to him were as he went into that meeting?
10 A. Here again, the concept of marching orders, we were
11 trying to get to an agreement generally, and I believe
12 the instructions were to continue to move towards that
13 process, whatever that was. And so the specific
14 bid/ask that were going on throughout that time, I
15 don't -- I don't recall, but the general concept was
16 to continue to try to move to a point to get to a
17 discount number or a discount process.
18 Q. Is it fair to say that if I ask you for the specific
19 ebb and flow of the negotiations between the Swap
20 counterparties in terms of the precise business
21 deal --
22 A. Right.
23 Q. -- you would have to defer to Mr. Buckfire's
24 recollection because he was more intimately involved?
25 A. That's fair. Because Ken was -- Ken would have the

1 direct meetings and then call me back. We'd go back
2 and forth, and I didn't keep notes and I didn't keep a
3 calendar, so --
4 Q. I asked you about nondisclosure agreements, but did
5 the City execute any other agreements of any kind with
6 the Swap counterparties during this period that you
7 were negotiating the forbearance agreement?
8 A. No, not that I know of.
9 (Discussion off the record at 8:59 a.m.)
10 (Back on the record at 8:59 a.m.)
11 MR. HACKNEY: No. Problem. Let's go off
12 the record.
13 VIDEO TECHNICIAN: The time is 8:59 a.m.
14 We are off the record.
15 (Recess taken at 8:59 a.m.)
16 (Back on the record at 9:08 a.m.)
17 VIDEO TECHNICIAN: We are back on the
18 record at 9:08 a.m.
19 BY MR. HACKNEY:
20 Q. Mr. Orr, I want to clear something up. Maybe I've
21 been saying it the wrong way. I've been using the
22 term "marching orders" with the respect to the way
23 that you and Mr. Buckfire operated.
24 A. Right.
25 Q. And is a better way to say it that you authorized

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1 Mr. Buckfire to negotiate the best possible deal he
2 could with the Swap counterparties and that's what he
3 did?
4 **A. That's a fair characterization, sure.**
5 Q. And at some point did he come out of a meeting and
6 say, Mr. Orr, this is the best deal that I'm able to
7 get out of these Swap counterparties and it's my
8 advice that we take it?
9 **A. Yes.**
10 Q. And was that on or about June 11th, 2013, which is the
11 date he recalls the agreement in principle being
12 reached?
13 **A. Yes.**
14 **MR. SHUMAKER:** Objection to form.
15 **BY MR. HACKNEY:**
16 Q. And what was the agreement in principle that was
17 reached as you understood it?
18 **A. The agreement was essentially that in exchange for a**
19 **reduced optional termination payment -- we'll just**
20 **call it the payment under the forbearance agreement --**
21 **the Swap counterparties would agree not to trap the**
22 **cash, they would agree to release their liens, and**
23 **also release their claims, I believe, against your**
24 **client, Syncora, and we would have access to that cash**
25 **going forward provided we made the discounted payment**

1 Q. And you did not invite Syncora to participate in these
2 negotiations, correct?
3 **A. Correct.**
4 Q. And you did not inform Syncora of the existence of
5 these negotiations, correct?
6 **A. The reason I'm hesitating is at some point clearly**
7 **Syncora became aware, so I don't know how they were**
8 **informed, but I did not do it, correct.**
9 Q. You didn't do it.
10 **A. Correct.**
11 Q. And you did not invite FGIC to attend these
12 negotiations, correct?
13 **A. I believe that's correct.**
14 Q. And you didn't direct anyone acting on your behalf to
15 invite FGIC, correct?
16 **A. Correct.**
17 Q. Nor did you inform FGIC of the existence of these
18 negotiations, correct?
19 **A. Me personally, no.**
20 Q. You didn't invite U.S. Bank as trustee to the funding
21 trust or as custodian or contract administrator to
22 attend any negotiations, correct?
23 **A. Me personally, no.**
24 Q. And you didn't direct anyone else acting on your
25 behalf to do so, correct?

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1 **at some point in the future. I believe at that point**
2 **it was in the next 60, 90 days.**
3 Q. Isn't the -- wasn't the agreement in principle that
4 you'd have an option to direct the termination of the
5 Swap?
6 **MR. SHUMAKER:** Objection, calls for a legal
7 conclusion.
8 **A. Yeah. I believe the way it works is we would have an**
9 **option to request the counterparties exercise their**
10 **rights at a discounted level.**
11 **BY MR. HACKNEY:**
12 Q. And I'm not asking about the forbearance agreement.
13 I'm asking about the agreement in principle.
14 **A. Yeah, I think those were the general confines of the**
15 **agreement in principle.**
16 Q. Okay. Now, you did not invite anyone else to the
17 negotiations with the Swap counterparties; isn't that
18 correct?
19 **A. I did not invite anyone else. I don't know if Ken**
20 **invited anyone else or anyone else on my behalf**
21 **invited anyone else.**
22 Q. And you did not direct anyone such as Mr. Buckfire or
23 others to invite any other parties into the
24 negotiation, correct?
25 **A. Correct.**

1 **A. Correct.**
2 Q. Now, why didn't you invite Syncora into these
3 negotiations with the Swap counterparties?
4 **A. After consultations with my, you know, team, we didn't**
5 **think Syncora had any right to be involved in the**
6 **negotiations.**
7 Q. And that's because Syncora had no rights under the
8 relevant documents?
9 **A. That was my understanding, yes.**
10 Q. Now, at any time during these negotiations -- and by
11 these negotiations, I mean through the June 11th
12 agreement in principle.
13 **A. Um-hm.**
14 Q. Okay? I understand that there are legal negotiations
15 of the scrivener of the document --
16 **A. Sure.**
17 Q. -- between June 11 and July 15. I going to ask you
18 about them, but when I say these negotiations, I'm
19 talking about the ones that we're talking about right
20 now --
21 **A. Um-hm.**
22 Q. -- that led to the agreement in principle.
23 **A. Okay.**
24 Q. At any time prior to June 11th, did the Swap
25 counterparties send a notice of a default under the

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1 Swap?
 2 A. I don't recall, but I don't think so.
 3 Q. At any time prior to June 11th, did the Swap
 4 counterparties designate an early termination date?
 5 A. I don't recall, but I don't think so.
 6 Q. Did they ever threaten to?
 7 A. They didn't threaten me.
 8 Q. They never threatened you personally.
 9 A. Right.
 10 Q. Did they threaten other people who reported the
 11 threats to you?
 12 A. Not that I know of.
 13 Q. At any time during these negotiations, did the Swap
 14 counterparties designate an optional early
 15 termination?
 16 A. Not that I know of.
 17 Q. Did they ever threaten to do that?
 18 A. Not me.
 19 Q. And did they ever threaten anyone else who reported
 20 the threat to you?
 21 A. Not to my knowledge, no.
 22 Q. At any time during these negotiations, did the Swap
 23 counterparties contend that the City was in breach of
 24 the collateral agreement?
 25 A. Which collateral agreement are you talking about?

1 A. Right.
 2 Q. I'll say that.
 3 A. Okay.
 4 Q. I've talked about events of default under the Swap
 5 that could lead to the big termination payment.
 6 A. Right.
 7 Q. We talked about that earlier, right?
 8 A. Right.
 9 Q. I'm talking specifically now about whether there were
 10 events of default under the collateral agreement. Had
 11 you breached any of the provisions of the collateral
 12 agreement?
 13 MR. SHUMAKER: Objection, calls for a legal
 14 conclusion.
 15 A. Yeah. That's why I'm being a little -- a little
 16 careful here. There may be conduct under the Swaps
 17 that could be conceivably a breach under collateral
 18 agreement. I don't know what they are, so I'm being
 19 hesitant. But to get to your question, were we making
 20 the payments due under the Swaps? Yes.
 21 BY MR. HACKNEY:
 22 Q. What was -- what was the conduct under the Swap that
 23 might be --
 24 A. I'm not sure.
 25 Q. As you sit here today, are you aware of any breaches

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1 Q. The collateral agreement with respect to the casino
 2 revenues.
 3 A. The 2009 agreement?
 4 Q. Yes.
 5 A. Okay. Not that I recall.
 6 Q. In fact, the City was endeavoring to make the monthly
 7 Swap payments into the holdback account throughout
 8 this period, correct?
 9 A. Yes. They were being paid in the ordinary course.
 10 Q. And to the best of your knowledge, the City has
 11 complied with all of its obligations under the
 12 collateral agreement vis-à-vis the Swap
 13 counterparties.
 14 A. No.
 15 Q. That's not correct?
 16 A. No, I mean I think we were -- as I said previously
 17 today, we were in default.
 18 Q. Of the collateral agreement?
 19 A. Right. You mean in terms of making the payments due
 20 under the agreement?
 21 Q. Well, the collateral agreement I know so -- the
 22 collateral agreement and the Swap are -- they are two
 23 different agreements --
 24 A. Yes.
 25 Q. -- that certainly relate to one another.

1 of the collateral agreement by the City?
 2 MR. SHUMAKER: Objection, calls for a legal
 3 conclusion.
 4 A. None from my perspective, but there might be. What I
 5 don't want to do is sit here today and try to draw a
 6 conclusion as to what might be a breach of the
 7 collateral agreement vis-a-vis the Swap agreement.
 8 I'm trying to answer your question that we were making
 9 the payments that were due.
 10 BY MR. HACKNEY:
 11 Q. Yeah, I appreciate that. I mean, I guess your answer
 12 is there may be breaches of the collateral agreement,
 13 there may not be, you don't know.
 14 A. I don't know, that's right.
 15 Q. Now, this June 11th agreement in principle that we
 16 were talking about earlier --
 17 A. Right.
 18 Q. -- was there a term sheet?
 19 A. No. To the best of my recollection, I did not see a
 20 term sheet at that time.
 21 Q. And just to be clear, do you know whether there was a
 22 term sheet that you just didn't see?
 23 A. Yeah. There might have been a term sheet that I
 24 didn't see. I think Ken and I and some of the other
 25 attorneys at Jones Day, Corinne, David Heiman and

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1 others would have a -- I'm trying to relay to you a
2 sense that we'd have calls, but sometimes I don't
3 recall seeing a specific term sheet at that time.
4 Q. I'm going to distinguish this from when you get into
5 the definitive document negotiation that's going to
6 become the forbearance agreement.
7 A. Right.
8 Q. You're familiar with the idea that sometimes parties
9 hash out a non-binding term sheet --
10 A. Yes.
11 Q. -- to get an understanding on the business terms, and
12 then they progress from the term sheet to the
13 definitive document. You're familiar with that
14 concept.
15 A. Yes.
16 Q. So I want to put the definitive documents over here.
17 A. Okay.
18 Q. Do you remember whether there was a term sheet?
19 A. There eventually was a term sheet. I just don't
20 remember whether or not it was on June 11th.
21 Q. That's fine. So do you think it went agreement in
22 principle, non-binding term sheet, and then
23 negotiation of definitive documents?
24 A. Yes.
25 MR. SHUMAKER: You're talking about in

1 Q. -- and July 15th, which is the execution date of the
2 forbearance agreement --
3 A. Yes.
4 Q. -- you pivot from negotiating this agreement in
5 principle that Mr. Buckfire has struck to now
6 documenting it, correct?
7 A. Yes.
8 Q. Now, Mr. Buckfire has testified that those -- that
9 those negotiations proceeded without interruption from
10 June 11th to Ju -- July 15th. Is that consistent with
11 your recollection?
12 A. The negotiations continued. I think there were other
13 events related to the agreement, some of them by your
14 client in that time frame, but yes, we continued
15 negotiating.
16 Q. Okay. And there were no serious interruptions in
17 those negotiations, correct?
18 MR. SHUMAKER: Objection to form.
19 A. There was an agreement reached. I'm going to take
20 your time frame, June 11th. Ken and I had a
21 discussion about the amount. It was somewhere south
22 of 25 percent. I believe in the same second week I
23 said we can't do this deal for less than a 25 percent
24 discount. I believe the negotiations broke down, then
25 the next day they came back without changing the

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1 time?
2 MR. HACKNEY: Yes.
3 MR. SHUMAKER: Chronologically?
4 MR. HACKNEY: Yes.
5 BY MR. HACKNEY:
6 Q. And so at some point you did see a non-binding term
7 sheet that embodied the agreement in principle
8 Mr. Buckfire had negotiated, correct?
9 A. Yes. Oh, yes.
10 Q. Okay.
11 MR. HACKNEY: Is that something that the
12 City's willing to produce?
13 MR. SHUMAKER: We'll look into it. I
14 don't -- I don't see that one as being an issue.
15 MR. HACKNEY: Okay.
16 MR. SHUMAKER: To the extent we have it.
17 BY MR. HACKNEY:
18 Q. And the term sheet was consistent with the agreement
19 in principle that we discussed earlier that
20 Mr. Buckfire negotiated?
21 A. Yes. It had obviously, as terms do, have more
22 information, but it was consistent.
23 Q. So between July 11 -- I'm sorry.
24 Between June 11th --
25 A. Okay.

1 framework of the agreement, just the number changed,
2 the discount went up, and then I believe that -- yes,
3 I believe negotiations continued continually
4 throughout that time.
5 BY MR. HACKNEY:
6 Q. And they -- they continued from June 11 to July 15
7 without serious interruption, correct?
8 MR. SHUMAKER: Objection to form.
9 A. Yeah, here again, your characterization of serious
10 interruption and to July 15th, I don't want to testify
11 to your characterization. What I can say is it was my
12 understanding that negotiations continued from that
13 second week of June to that date, if that's the date
14 that you're relaying to me based upon Mr. Buckfire's
15 testimony.
16 BY MR. HACKNEY:
17 Q. Were there any serious interruptions in the
18 negotiations between June 11 and July 15?
19 MR. SHUMAKER: Same objection.
20 A. You keep saying serious, and to the best of my
21 knowledge there were no material or significant
22 interruptions. I don't want to try to characterize
23 what serious means. I think negotiations continued
24 unabated.
25 BY MR. HACKNEY:

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1 Q. There were little -- there may have been points of
2 contention between the parties, but they continued
3 steadily from June 11 to July 15, true statement?
4 A. Here again, I believe June 14th was the creditor's
5 meeting, and I don't have a document to refresh my
6 recollection in front of me, but I believe your client
7 sent a letter at some point during that time which I
8 think had an impact on negotiations, so I'm being
9 careful with the concept that they continued without
10 serious interruption because I think there may have
11 been interruptions.
12 Q. So there may have been a serious interruption in the
13 negotiations.
14 A. Yeah. I just don't remember the time frame. I mean
15 you probably recall there were a series of letters
16 between Mr. LeBlanc and your client at first to the
17 custodian and then to me and then I wrote back to him.
18 I'm just not recalling the specific dates of those
19 letters, but I believe they were during this time.
20 Q. And those caused a serious interruption in the
21 negotiations, right?
22 A. Here again, you say -- you say serious, and I'm saying
23 it caused an interruption. There was -- there were --
24 I recall there were letters that I was sending back
25 and forth, and so whether or not it was serious, I

1 negotiations had been stalled by Syncora?
2 A. Well, I think there were discussions about Syncora's
3 behavior that was reflected in my letters.
4 Q. That wasn't my question. My question was did you tell
5 Mr. Buckfire that there had been -- that the
6 negotiations had been stalled as a result -- as a
7 resort of Syncora's conduct?
8 A. Sir, that's your phrase, "stalled." What I said was I
9 think they did have an impact on the negotiations
10 because there were communications going back and
11 forth, I think we discussed them, and I think I sent a
12 series of letters back and forth to your client as a
13 consequence of that behavior.
14 Q. You wouldn't use the -- you wouldn't use the word
15 stalled to describe the negotiations impact --
16 Syncora's impact on the negotiations, correct?
17 A. Yeah, I'm not going to use any adjectives --
18 specifically what I said is they had an impact.
19 Q. But you can't say that they stalled?
20 A. I don't know if they did or they didn't. I said they
21 had an impact.
22 Q. Okay. And did you inform Mr. Buckfire that there had
23 been a serious interruption in the negotiations with
24 the Swap counterparties?
25 MR. SHUMAKER: Objection, asked and

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1 believe they're interruptions, if this is the time
2 frame I'm thinking of. If they came after the
3 June 14th date and it was July 17th, for instance,
4 that's when that -- those events occurred.
5 Q. Okay.
6 A. I just don't recall the times.
7 Q. I'll represent to you, and I'm going to show it to you
8 in a moment, but Syncora's letter was June 17th.
9 A. Okay. Then that -- yeah, then that -- that caused
10 some disruption.
11 Q. It caused some disruption, but did it cause a serious
12 interruption in the negotiations?
13 A. Yeah, because the benefit that we -- we were supposed
14 to get which was -- actually as I recall, your client
15 sent a letter to UBS. UBS expressed some concern.
16 The negotiations that we were going through were
17 impacted by those concerns and, here again, recalling
18 off the top of my head, there were discussions then.
19 Mr. LeBlanc sent me a letter, I sent him one, I think
20 he sent me another one, I think we exchanged two or
21 three letters, and those all had an impact on the
22 negotiations, yes.
23 Q. Did they stall the negotiations?
24 A. To some degree I believe they did.
25 Q. And did you inform Mr. Buckfire that these important

1 answered.
2 A. Yeah, here again, I don't think I had to inform him.
3 We were all of the opinion that after announcing, I
4 believe -- after reaching, rather, we thought was
5 agreement in principle, I believe that following
6 Monday, if it's the 17th, your client sent a letter
7 and interjected itself into this process and --
8 BY MR. HACKNEY:
9 Q. So Mr. --
10 A. -- that had an impact.
11 Q. Sorry to interrupt you.
12 A. You're okay.
13 Q. Mr. Buckfire was well aware of the serious
14 interruption in the negotiation process, correct?
15 MR. SHUMAKER: Objection, foundation, form.
16 A. Here again, you keep saying serious interruption. I
17 said it had an impact. Whether or not that stopped us
18 from having discussions with the Swap counterparties
19 and going forward, it certainly had an impact on the
20 process.
21 BY MR. HACKNEY:
22 Q. It didn't stop the process, though, did it?
23 A. It had an impact on it. We were -- we were trying to
24 continue going forward in figuring out what your
25 client's intent was and whether or not it should have

1 an impact on the Swap counterparties or the custodian.
 2 Q. But did you inform Mr. Buckfire that Syncora's
 3 letter -- Mr. Buckfire, the lead negotiator of the
 4 business terms of the deal, that Syncora's letter had
 5 disrupted the negotiations of this important
 6 agreement?
 7 A. I don't know if I --
 8 MR. SHUMAKER: Objection, form.
 9 A. I don't know if I had to inform Mr. Buckfire. He saw
 10 the letters that were going back and forth and I'm
 11 sure he was aware that they had an impact on what we
 12 were trying to achieve.
 13 MR. HACKNEY: Let me hand you a document
 14 I've marked for purposes of identification as Orr
 15 Exhibit 1.
 16 MARKED FOR IDENTIFICATION:
 17 DEPOSITION EXHIBIT 1
 18 9:24 a.m.
 19 BY MR. HACKNEY:
 20 Q. Is this a copy of Syncora's June 17th, 2013 letter?
 21 A. Um-hm.
 22 Okay. I've read the letter.
 23 Q. Have you had a chance to read it?
 24 A. Yes.
 25 Q. First question, are there any statements you consider

1 the tenor, without parsing through the entire letter,
 2 we believed that the tenor of the letter was
 3 inappropriate.
 4 Q. But there were -- are there any other statements that
 5 were false in this letter other than the sentence you
 6 identified on the cross-default?
 7 MR. SHUMAKER: I want you to go through it
 8 sentence by sentence.
 9 A. We write in reference to the General Receipts
 10 Subaccount under the cap --
 11 COURT REPORTER: I'm sorry.
 12 A. Okay. The first sentence of the first paragraph is a
 13 reference in it, so I don't believe that would fall
 14 into whether or not it's true or false. It's what
 15 they purport to be writing to. I suppose someone
 16 could take an interpretation that to the extent
 17 they're trying to reference the cross
 18 collateralization is false, but I'm not trying to be
 19 insincere, so I'm just going to go through the letter.
 20 The second sentence of the first paragraph
 21 is a general business nomenclature, so that's a throw
 22 away. June 14th service corporations failed to -- the
 23 first sentence of the second paragraph I believe we
 24 did fail to make the June 14th payment.
 25 BY MR. HACKNEY:

1 to be false in this letter?
 2 A. I think there was a discussion that some of the
 3 statements regarding the cross-default provision --
 4 this is -- this is what I understood of this letter
 5 after -- without going into specific discussions with
 6 my attorneys, that I had with my attorneys, that my
 7 understanding was Syncora was attempting to tell U.S.
 8 Bank, as custodian, that the default on the COP
 9 payment on June 14 constituted some form of a
 10 cross-default and therefore it impacted the settlement
 11 we were teaching -- attempting to reach under the Swap
 12 agreement.
 13 We did not believe that those two events
 14 had a relationship in that position it appeared
 15 Syncora was taking, trying to tell U.S. Bank not to
 16 release any of the casino revenue to us, was
 17 appropriate.
 18 Q. Other than the letter characterizing the missed
 19 payment as a cross-default, other than the sentence,
 20 are there any other sentences in this letter that you
 21 think are false?
 22 A. Well, the first paragraph is an introductory
 23 paragraph, so I don't think that's relevant. The
 24 second paragraph -- the last paragraph is someone
 25 reserving their rights, and that's fine. Generally

1 Q. The second sentence we've discussed.
 2 A. Which is the substantive sentence I believe is -- is
 3 the one that we had issues with, we felt was
 4 inappropriate.
 5 The third paragraph, first sentence, I
 6 don't know whether that was false or not because I
 7 wasn't privileged to -- privy to that conversation.
 8 The second sentence is a request of the third
 9 paragraph. That consent is required for any release,
 10 I think that was another -- the last sentence of the
 11 third paragraph I think we had a problem with that,
 12 and as I said before, the final paragraph sentence I
 13 don't think is germane to discussion that we're
 14 having. It's a standard business sentence.
 15 Q. And the last sentence of the third paragraph you had a
 16 problem with because you don't think Syncora has
 17 consent rights, correct?
 18 A. Yes, that's correct, yeah.
 19 Q. Now, how did this letter disrupt negotiations with the
 20 Swap counterparties?
 21 A. Well, my -- my understanding is it raised concerns as
 22 far as what Syncora thought their rights were and what
 23 they were going to do. I think people have to
 24 understand this was a very sensitive and urgent
 25 situation. As I said before, the week before we had

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1 checks bounce, we were running about four or nine
2 million dollars, we needed urgent access to the -- to
3 the revenue, and I think it caused all parties to take
4 a step back.

5 Q. And how long did they step back?

6 A. I don't -- to be perfectly honest with you, I don't --
7 I don't really recall. I remember, as I said before,
8 after this letter there were a series of letters that
9 went back and forth, and I recall that there was some
10 concern by the counterparties as to their potential
11 exposure based upon Syncora's behavior and whether or
12 not they would be free to give us access to the casino
13 revenue.

14 Q. They were concerned that Syncora might be right,
15 correct?

16 A. No. That's your characterization. I think my general
17 understanding was that everyone felt Syncora was quite
18 wrong.

19 Q. Didn't you just say that they were worried about their
20 exposure?

21 A. Well, their exposure in terms of -- not that they were
22 right, their exposure in terms of potential litigation
23 and having to parse through a position which they
24 thought was unfounded.

25 Q. So they were worried about having to engage in a

1 Q. Was there anything that you can recall today that
2 happened on July 5th that was so urgent it couldn't
3 wait six hours?

4 A. Every -- every day -- let me be clear about this, so
5 we can just get by it. Every day that the City does
6 not make reinvestment in the City that has tens of
7 thousands of abandoned structures, that has four of
8 the most dangerous neighborhoods in the country, that
9 has police cars with over 250,000 miles on them, that
10 has police officers I believe during this time, one of
11 whom got shot in the head by a perpetrator that nine
12 cars had surrounded and remains in the hospital today,
13 every day that this City does not make reinvestment is
14 a dangerous day.

15 Q. Were there any negotiations scheduled for July 5th,
16 2013, the day after July 4?

17 A. I don't -- I don't recall. If there's something you
18 can refresh my recollection. I believe there was --
19 there was something on July 5th. I'm just not
20 recalling what it was.

21 Q. Did this letter cause the negotiations to cease
22 between June 17th and when you're able to obtain the
23 TRO on July 5th?

24 A. I wouldn't say whether it caused them to cease. As I
25 said before, it had an impact and it was disruptive.

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1 litigation with Syncora over a frivolous legal
2 position that Syncora was taking?

3 MR. SHUMAKER: Objection to form.

4 BY MR. HACKNEY:

5 Q. That's your understanding?

6 A. Well, no. You're characterizing it as frivolous. I
7 think any prudent business people when they receive
8 letters like this, if they don't believe they are well
9 founded are certainly justified in being concerned
10 about potential litigation.

11 Q. Were there any out-of-the-ordinary emergencies in the
12 City of Detroit on July 5th that demanded your
13 attention?

14 A. There are always out-of-the-ordinary emergencies in
15 the City of Detroit.

16 Q. What were the ones on July 5th?

17 A. I don't -- I don't remember the ones on July 5th, but
18 I'm sure you can check. We can -- you know, you can
19 check the press reports as far as -- so there are
20 shootings daily, there are fires, there are unfunded
21 mandates within the City.

22 Q. Anything that stands out in your mind?

23 A. There are always -- there are always emergencies.
24 Nothing that stands out in my mind, but on any given
25 weekend, we get 30 shootings a weekend.

1 Q. Okay. So it had an impact, but it didn't cause them
2 to stop, correct?

3 A. To some degree the parties -- you know, to some degree
4 my recollection is -- here again, understanding that
5 I'm the client and I'm relying on my team, my
6 understanding was it had an impact and it was
7 disruptive.

8 Q. Did negotiations stop between June 17th and July 5th?

9 A. I don't know if they completely stopped because your
10 characterization of negotiations could include
11 discussions about what to do with Syncora's
12 interruption.

13 Q. So the answer to my question is no, they did not stop?

14 A. No. The answer to your question is just what I said.
15 The characterization of the interruption could include
16 this letter.

17 Q. Okay. But it's a simple question, and you were the
18 person that was involved for the City in making the
19 ultimate decision. Did the negotiations of the
20 forbearance agreement's final terms stop between
21 June 17th and July 5th when you're able to get a TRO?

22 MR. SHUMAKER: Objection, asked and
23 answered.

24 A. Sir, I'm going to stick with my answer. It was
25 disruptive and it was -- had an impact.

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1 BY MR. HACKNEY:
2 Q. Can you answer the question as to whether they
3 stopped?
4 A. Your characterization --
5 MR. SHUMAKER: Objection, asked and
6 answered.
7 A. On any given day they may have. I'm going to stick
8 with my answer.
9 BY MR. HACKNEY:
10 Q. Were there any negotiations with the Swap
11 counterparties between June 17th and July 5th?
12 A. There probably were.
13 Q. After Syncora -- let me -- let me stop.
14 So after you obtained the TRO, did that
15 facilitate the resumption of the negotiations?
16 A. When did we obtain the TRO?
17 Q. July 5th.
18 A. That was the event I was talking about. I think it
19 certainly facilitated the parties continuing to
20 discuss, yes.
21 Q. It didn't resolve any of Syncora's rights, correct?
22 A. Well, we didn't -- we didn't --
23 MR. SHUMAKER: Objection to the extent it
24 calls for a legal conclusion.
25 A. We didn't think Syncora had rights in this regard, but

1 A. I don't recall if it was one week later or not. I
2 believe it was dissolved a week or so ago. I don't
3 recall whether or not we were willing to resolve it
4 one week later -- dissolve it one week later.
5 Q. If I told you that your counsel represented to me on
6 July 12th, one week after the TRO was entered, that
7 you were willing to dissolve the TRO, do you have a
8 basis to contradict that?
9 MR. SHUMAKER: Objection, form, foundation.
10 A. Yeah, if my counsel was telling you that in the
11 context of potential settlement negotiations, I'm --
12 I'm a little hesitant to characterize what he said,
13 but I have no basis -- if my counsel represented that
14 to you, I have no basis to object to that.
15 BY MR. HACKNEY:
16 Q. And if they represented it in pleadings to the Court,
17 you don't have a basis to dispute that either?
18 A. No.
19 Q. Okay. So this critical TRO that you had obtained,
20 your counsel was willing to dissolve ten days after it
21 was entered, correct?
22 MR. SHUMAKER: Objection. Counsel, this is
23 discovery about the assumption motion, correct? I
24 mean this is not discovery for the City's lawsuit
25 against Syncora.

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1 my understanding of the TRO was to cause Syncora to
2 cease and desist from its behavior.
3 BY MR. HACKNEY:
4 Q. But you understand that whatever Syncora's rights were
5 before the TRO, they were after the TRO. The TRO
6 doesn't resolve Syncora's rights. It's just an
7 interim measure. You understand that as a lawyer,
8 right?
9 A. Well --
10 MR. SHUMAKER: Same objection, form.
11 A. And let's get by this, sir. Yes, I am an attorney,
12 but I do not have a license in the state of Michigan
13 and I'm not practicing law now nor do I have
14 malpractice insurance, so I think it's fair for me to
15 act as a -- act as a client, a business person, and
16 not draw a legal conclusion as far as what your
17 client's rights are.
18 BY MR. HACKNEY:
19 Q. And the TRO was very important because it stopped
20 Syncora from doing what it was doing, correct?
21 A. Yes. My understanding is it did, sure.
22 Q. And that was critical, right?
23 A. I thought it was appropriate, yes.
24 Q. And then you were willing to dissolve the TRO one week
25 later, correct?

1 MR. HACKNEY: Syncora -- Syncora's alleged
2 conduct is included in Mr. Orr's affidavit. It's
3 described in the assumption motion. I mean, come on,
4 this is right up Main Street.
5 A. Well, sir, I understand you're trying to get me to
6 characterize what we were doing for purposes in the
7 litigation. If you want to stick to the facts as far
8 as what happened, I'm happy to talk to you about
9 those, but you asked me a question before as to
10 whether or not I would have any reason to object on
11 what my counsel represented to you and I said no.
12 BY MR. HACKNEY:
13 Q. If Syncora's letter represented such a threat to the
14 City, why were you willing to dissolve the TRO that
15 stopped the impact of Syncora's letter?
16 MR. SHUMAKER: Objection, form, foundation.
17 A. Here again, there. There -- part of your question is
18 calling for a little bit of speculation. Clearly, you
19 were having discussions with my counsel potentially
20 about what could be done to resolve this issue. Your
21 question may not include the context of all of those
22 discussions.
23 BY MR. HACKNEY:
24 Q. I'm referring to statements you made in pleadings.
25 A. Well, I'm trying to respond to your question. There

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1 may be other reasons why they made those
2 representations. What I will say to you is what I
3 said before. If my counsel represented to you that we
4 were willing to dissolve it, I have no reason to
5 contradict that.

6 Q. And they would have done that at your behest, right?

7 **MR. SHUMAKER:** Objection, form, foundation.

8 A. They -- we would have the -- they would have had the
9 authority to do that, yeah.

10 **BY MR. HACKNEY:**

11 Q. During the course of your negotiations back to the
12 agreement in principle of what became the forbearance
13 agreement, did you ever solicit the views of any of
14 the other monoline insurers, such as Ambac or Assured
15 or National about what they thought the City should
16 do?

17 A. Not that I recall.

18 Q. Did you ever solicit the views of any COP holders
19 about what they thought the City should do with
20 respect to the --

21 A. I didn't solicit their views, no.

22 Q. Did you direct anyone acting on your behalf to solicit
23 the views of any of those parties?

24 A. Not that I recall.

25 Q. Isn't it true that getting the forbearance agreement

1 who had a gun pointed at her three times in her front
2 yard by people who were stripping a car in front of
3 her -- that's a very serious threat in the City, and I
4 don't want anyone to undermine the concept that this
5 revenue is necessary to make this City a safer place.

6 Q. So it's fair to say that when it comes to the City's
7 access to casino revenues, lives of the people of the
8 City of Detroit are at stake?

9 A. Lives of the people of the City of Detroit are at
10 stake every day.

11 Q. I know that's true. I'm aware of the fact people that
12 live and die, but I'm asking with respect to access to
13 the casino revenues. Access to the casino revenues is
14 something that lives are at stake regarding, correct?

15 A. Health, safety and welfare of the citizens are crucial
16 and this casino revenue allows us to enhance that.

17 Q. And lives are at stake, right?

18 A. Health, safety and welfare of the City is crucial and
19 this casino revenue allows us to enhance that.

20 Q. Can you agree with me that lives are at stake?

21 **MR. SHUMAKER:** Objection, asked and
22 answered.

23 A. I've answered the question.

24 **BY MR. HACKNEY:**

25 Q. That's not something you can agree with?

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1 was a life or death issue for the City of Detroit?

2 A. Yes, getting the forbearance agreement was very
3 important to the City of Detroit.

4 Q. Is it a life or death issue?

5 **MR. SHUMAKER:** Object to form.

6 A. When you say life or death, you know, here again I'm
7 trying to be responsive, but I want (sic) to
8 characterize it. The City needs the casino revenue
9 badly. It was cash poor at that time. It would have
10 facilitated without access, and it continues to be
11 relatively cash poor without access. It could have
12 facilitated a cash crisis. Life or death suggests to
13 me it was critical and it might have been life or
14 death, but what it does mean is that we could not have
15 made the investment and cannot make the investment
16 that is so crucial for the City.

17 **BY MR. HACKNEY:**

18 Q. In fact, isn't it your position that without access to
19 the casino revenues that people in the City of Detroit
20 may die?

21 A. Yes.

22 Q. Okay.

23 A. People -- you know, you may think of that as
24 hyperbole, but this is a City where between car
25 jacks, crime -- just last week, there was a woman

1 A. I told you, lives are at stake in the City every day.

2 Q. Are they at stake with respect to access to the --

3 A. Every day --

4 Q. -- casino revenues?

5 A. I will say again, every day that we don't have access
6 to casino revenue, we cannot make the necessary
7 reinvestment in this City to provide for the health,
8 safety and welfare of the citizens, and that's a true
9 statement.

10 Q. If I said that lives are at stake with respect to the
11 casino revenues, can you agree with that statement?

12 **MR. SHUMAKER:** Objection, asked and
13 answered.

14 A. I've answered your question.

15 **BY MR. HACKNEY:**

16 Q. Can you -- can you agree with my statement?

17 A. I've answered your question.

18 Q. I disagree that you've answered my question. We'll
19 take the objection up at the -- with the Court, but
20 are lives at stake with respect to access to the
21 casino revenues?

22 A. I've answered your question.
(Whereupon Rick Frimmer left the
23 deposition at 9:41 a.m.)

24 **MR. HACKNEY:** Well, we're going to have to

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1 take a motion to compel then on this one, Greg. I've
2 not gotten an answer to that question.

3 **MR. SHUMAKER:** I disagree.

4 **BY MR. HACKNEY:**

5 **Q.** We can agree that access to the casino revenues was an
6 issue of extreme importance to the City, right?

7 **A.** Yes.

8 **Q.** There was no guarantee going into the negotiations
9 with the Swap counterparties that they were going to
10 grant you that access, correct?

11 **A.** That is true.

12 **Q.** Given the importance of this issue, what was your
13 backup plan?

14 **A.** We had discussed a number of alternatives, but quite
15 frankly, there were none that made any sense.

16 **Q.** So what -- so you had no backup plan?

17 **A.** No. Sir, this City had reduced FTEs by over
18 20 percent before I got here. The police department
19 had lost hundreds, I believe, before I got here under
20 the point -- this year, from January 1, we've lost in
21 excess of 300 employees.

22 Even if you did an analysis of the City of
23 \$40,000, the salary per FTE, and the City benefits
24 account for 108 percent of FTE, so let's say 80,000
25 times 300 lost employees. That's only 24 million

1 **A.** No. That's what I was just saying. We had discussed
2 alternatives, but this was crucial.

3 **Q.** Given the importance of this issue, I assume that you
4 had made requests from the State of Michigan to
5 provide the City with liquidity prior to June 4th;
6 isn't that correct?

7 **A.** Sir, you can assume whatever you want. The reality is
8 under my contract I have an obligation to report and
9 coordinate with the State. We had had discussions, I
10 believe, with the State about potential liquidity, and
11 we were told that that would be unavailable.

12 **Q.** And you conveyed to the State the seriousness of the
13 City's situation, correct?

14 **A.** I don't think I had to convey to the State the
15 seriousness of the City's situation. I think the
16 State's well aware.

17 **Q.** So the State understood that getting liquidity was a
18 life or death issue for the City of Detroit, correct?

19 **MR. SHUMAKER:** Objection, form, foundation,
20 calls for speculation.

21 **A.** Whatever the State understood, what I'm trying to tell
22 you is I conveyed to them what our needs are.

23 **BY MR. HACKNEY:**

24 **Q.** You conveyed the extreme seriousness of the situation
25 to the State, correct?

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1 dollars. So even if we reduced the City -- tried to
2 reduce it by more employees beyond the roughly 9,700
3 that we have, you wouldn't have a way to stem the loss
4 of almost 132 to 180 million dollars in casino
5 revenue. So when you say what other alternatives we
6 had, this was a crucial component of any plan that we
7 would have.

8 **Q.** Do you have any --

9 **A.** This is the third largest source of income for the
10 City.

11 **Q.** And I -- I have a limited time with you today,
12 Mr. Orr, and I'd appreciate it if you answered my
13 questions directly to the extent you're able.

14 Did you have a backup plan if you couldn't
15 get the Swap counterparties to waive their cash
16 trapping rights?

17 **A.** We discussed alternatives. When you say plan, that
18 suggests to me that we were going to say we were going
19 to do this if we can't do that. We had discussed
20 alternatives.

21 **Q.** But you can't say that you had a plan?

22 **A.** No. This was crucial.

23 **Q.** And if Mr. Buckfire testified that you'd just started
24 developing your backup plan recently, do you have a
25 basis to contradict that?

1 **A.** As I said, I don't think I had to convey it to the
2 State. The State had just been through almost two
3 years of determining a financial emergency existed.

4 **Q.** And the State did not provide the City with any
5 liquidity prior to June 4th, correct?

6 **A.** No.

7 **Q.** I am correct that they didn't?

8 (Whereupon Jerome Goldberg entered the
9 deposition at 9:44 a.m.)

10 **A.** You are correct, they did not.

11 **BY MR. HACKNEY:**

12 **Q.** Now, given that seriousness of the liquidity crisis
13 and the life or death issues that were facing the
14 City, I assume you also evaluated the value of the
15 City's non-core assets for possible sale, correct?

16 **MR. SHUMAKER:** Object to the form,
17 mischaracterizes his testimony.

18 **A.** Is that a compound question?

19 I think in our June 14 proposal and the run
20 up to the June 14 proposal, we had listed in our
21 proposal for creditors a number of assets of the City,
22 and we had also said that we were in the process of
23 evaluating what to do.

24 **BY MR. HACKNEY:**

25 **Q.** And the City owns a fine art collection; isn't that

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1 correct?

2 **A. The City owns the Detroit Institute of Arts in its**

3 **collection.**

4 Q. And did you attempt to value the art collection with

5 an eye towards selling pieces of the art collection to

6 relieve the City's life or death liquidity crisis?

7 **MR. SHUMAKER: Object to the form.**

8 **A. Prior to June 14th?**

9 **BY MR. HACKNEY:**

10 Q. Prior to June 11th, which is the date of the agreement

11 in principle.

12 **A. No. We've entered into an agreement with Sotheby's to**

13 **begin that process now, not related to relieving the**

14 **liquidity crisis, just as a matter of prudence to**

15 **determine the value of assets.**

16 Q. Your expectation is that the -- that the City's art

17 collection is very valuable; isn't that correct?

18 **A. I've been told that, yes.**

19 Q. Isn't it possible it may be worth billions of dollars?

20 **A. That would be speculation. I've been told it is**

21 **valuable.**

22 Q. Could it be worth hundreds of millions of dollars?

23 **A. That would be speculation. I've been told that it's**

24 **valuable.**

25 Q. Okay. So as of June 4th, you didn't know whether or

1 entities that have long names that I'll only say to

2 you if you want -- really want me to.

3 **A. We'll stipulate I know what you mean by the service**

4 **corporations.**

5 Q. And there are two of them?

6 **A. There are two.**

7 Q. Okay.

8 **A. Police and Fire General Services.**

9 Q. There you go. So you already know them and you said

10 the names. So the two service corporations are

11 parties to the forbearance agreement, correct?

12 **A. Yes.**

13 Q. And Mr. Buckfire testified yesterday, I'll represent

14 to you, that his understanding is that you directed

15 the service corporations to execute the forbearance

16 agreement and they did so; is that correct?

17 **A. No.**

18 Q. Okay. Were there arms' length negotiations with the

19 service corporations?

20 **A. To the best of my knowledge, there was.**

21 Q. And who led those?

22 **A. I'm not quite sure. I know that -- in response to**

23 **your question, I did not direct a service corporation.**

24 **They were organized by the City. And they are managed**

25 **by City employees, but I had no direct -- I gave no**

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1 not the City might have billions of dollars of art

2 sitting in its art institute; is that your testimony?

3 **A. No. My testimony is that I understand it as valuable.**

4 **The exact value of it is to be determined.**

5 Q. And you made no effort to sell any of that art prior

6 to engaging in the negotiations with the Swap

7 counterparties, correct?

8 **A. No. That's true.**

9 Q. What about federal aid? Did you attempt -- did you

10 attempt to obtain federal aid prior to the June 4

11 commencement of negotiations with the Swap

12 counterparties?

13 **A. I don't know if it was prior to or around that time.**

14 **It may have been. We may have sought federal aid**

15 **prior to that.**

16 Q. And you conveyed the seriousness of the situation to

17 whomever you spoke to at the federal government?

18 **A. Yes, I believe the federal government was aware of the**

19 **seriousness of the situation.**

20 Q. And the federal government was also unwilling to

21 provide aid to the City of Detroit; is that your

22 testimony?

23 **A. Yes, direct aid.**

24 Q. Let me ask you some questions about the service

25 corporations. The service corporations are two

1 **direct instruction to either of the service**

2 **corporations.**

3 Q. Okay. So my question was about negotiations with the

4 service corporations.

5 **A. Right.**

6 Q. Who conducted the arms' length negotiations with the

7 service corporations on behalf of the City?

8 **A. I'm not sure.**

9 Q. Well, you know it wasn't you?

10 **A. Yes, it wasn't me.**

11 Q. And did you ever direct Mr. Buckfire to engage in

12 direct negotiations with the service corporations?

13 **A. No. I directed Mr. Buckfire to do whatever needed to**

14 **get done to get the agreement in principle resolved**

15 **and signed. That's what I did, but I did -- said**

16 **nothing specific. Just to be responsive to your**

17 **question, said oh, go talk to the service**

18 **corporations, there was nothing that specific.**

19 Q. So to the extent there was a negotiation that needed

20 to be had, it was his job to go have it?

21 **A. It was his or someone else on my -- on my**

22 **reorganization team's job, yeah, sure.**

23 Q. Well, did you direct anyone else on your team to go

24 negotiate with the service corporations?

25 **A. No. Once we reached an agreement in principle, I**

1 directed my team to more or less go forth and get it
2 documented and get it done.
3 Q. And the service corporations are legally separate from
4 the City, correct?
5 A. Yes, they are.
6 Q. Your powers as emergency financial manager do not
7 extend to the service corporations, correct?
8 A. I haven't examined that question, so I can't answer
9 you yes or no.
10 Q. Can you direct their actions under PA 436?
11 A. I'm not sure.
12 Q. Do you have any firsthand knowledge that the service
13 corporations engaged in arms' length negotiations with
14 the Swap counterparties?
15 A. No.
16 Q. If they had, do you think that's something you would
17 have likely heard about?
18 MR. SHUMAKER: Objection, calls for
19 speculation.
20 A. I may have. As emergency manager, there are a number
21 of things that occur, as you might imagine, on a daily
22 basis that I may or may not hear of. I might have.
23 BY MR. HACKNEY:
24 Q. As you sit here today, though, can you recall hearing
25 that there were ongoing negotiations between the

1 BY MR. HACKNEY:
2 Q. Do you understand that the collateral agreement
3 secures the City's obligation to the service
4 corporations and the service corporations' obligation
5 to the Swap counterparties?
6 A. That's the legal conclusion. It might. That's -- I'm
7 going to stay away from relaying my understanding
8 because, frankly, I haven't -- I'm going to be
9 careful, frankly. It might.
10 Q. Okay. You don't know as you sit here today?
11 A. I have an impression of something along those lines,
12 yes.
13 Q. And what is it?
14 A. That it does -- it may well secure it. It's just that
15 it's a legal conclusion that I don't want to make.
16 Q. Okay.
17 A. Okay.
18 Q. Isn't it fair to say, though, that the collateral
19 agreement's existence meant that the service
20 corporations could rely on the City to make its
21 quarterly Swap-related interest payments?
22 A. Yeah, my understanding is that the casino revenue
23 comes in daily. It's put into an account. Monthly
24 there are payments that are put into the custodial
25 account and those payments are disbursed orally.

1 service corporations and the Swap counterparties?
2 A. No.
3 Q. Isn't it true that the City's obligation to the
4 service corporations under the service contracts with
5 respect to the hedge-related payments were secured by
6 the collateral agreement?
7 MR. SHUMAKER: Objection, calls for a legal
8 conclusion, foundation.
9 If you understand it, you can answer it.
10 A. I'm trying not to draw a legal conclusion. Repeat
11 your question; let me see if I can answer it.
12 BY MR. HACKNEY:
13 Q. I was just asking whether -- you understand that the
14 service corporations have service contracts with the
15 City?
16 A. Yes.
17 Q. And you understand that the City has hedge-related
18 payments that it has to make to the service
19 corporations --
20 A. Yes.
21 Q. -- that they then can use to make to the Swap
22 counterparties under the Swap?
23 A. Yes.
24 MR. SHUMAKER: Objection, calls for a legal
25 conclusion.

1 Q. Now, if the City's able to perform under the
2 forbearance agreement and exercises the option, the
3 effect of this is that the hedge will be terminated,
4 correct?
5 MR. SHUMAKER: Object to the form, calls
6 for a legal conclusion.
7 A. I believe there will no longer be a need for the
8 hedge, yes.
9 BY MR. HACKNEY:
10 Q. And the collateral agreement will also be terminated
11 in that event, correct?
12 A. If we -- if the City performs?
13 Q. Right.
14 A. Yes.
15 Q. And that will free up the casino revenues to be used
16 by the City, correct?
17 A. Yes.
18 Q. Okay. How does that benefit the service corporations?
19 A. I don't know if it does or doesn't. I know it
20 benefits the City.
21 Q. Can you think of a way that it benefits the service
22 corporations as you sit here today?
23 A. No. That would be speculation.
24 Q. And you understand that the service corporations
25 depend on the City to make the payments of their

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1 various obligations both under the COPs and the Swap?
 2 **A. I believe that's true.**
 3 Q. They don't have any independent sources of income?
 4 **A. To the best of my knowledge, they do not.**
 5 Q. And your view today is that the City of Detroit is
 6 insolvent, correct?
 7 **A. Yes, yes.**
 8 Q. And fair to assume that by extension the service
 9 corporations are also insolvent, too?
 10 **MR. SHUMAKER: Objection, calls for**
 11 **speculation.**
 12 **A. I don't know if that's true or not.**
 13 **BY MR. HACKNEY:**
 14 Q. Now, isn't it true that the composition of the service
 15 corporations' boards of directors includes three City
 16 officers and at least one City Council member?
 17 **A. Yes. I think I said before there are City employees**
 18 **and City representatives on the boards.**
 19 Q. And in fact the person who signed the forbearance
 20 agreement on behalf of the service corporations was
 21 the president of both service corporations, correct?
 22 **A. Yes, I believe so.**
 23 Q. And her name is Cheryl Johnson, right?
 24 **A. Yes.**
 25 Q. And she is also the City's finance director, correct?

1 **course and scope of their employment as employees of**
 2 **the City.**
 3 Q. Okay. So as you sit here today, you can't say that
 4 that indemnification policy would extend to City
 5 employee actions taken in their capacity as service
 6 corporations --
 7 **A. Correct.**
 8 **MR. SHUMAKER: Objection, calls for a legal**
 9 **conclusion.**
 10 **BY MR. HACKNEY:**
 11 Q. I will -- I'm sorry.
 12 **A. Okay.**
 13 Q. As emergency financial manager, you control the salary
 14 of all City employees; isn't that correct?
 15 **A. As emergency manager.**
 16 Q. As emergency manager, right.
 17 **A. Right.**
 18 Q. Sorry. Is that the proper --
 19 **A. It changed with Public Act 436. Public Act 72 was EFM**
 20 **and now I'm an EM.**
 21 Q. Okay. Got to get my lingo.
 22 **A. Yeah.**
 23 Q. And you do, as emergency manager, control the salary
 24 of all City employees, correct?
 25 **A. I have the authority to control the salary of all City**

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1 **A. Yes.**
 2 Q. Okay. Portia Roberson --
 3 **A. Um-hm.**
 4 Q. -- is the City's corporation counsel, right?
 5 **A. Yes.**
 6 Q. And she's also on the board of both service
 7 corporations, correct?
 8 **A. To the best of my knowledge, that's true.**
 9 Q. Do you know who made the decision at the service
 10 corporations to enter into the forbearance agreement?
 11 **A. I do not.**
 12 Q. Did you have any conversations with either Ms. Johnson
 13 or Ms. Roberson about the service corporations
 14 entering into the forbearance agreement?
 15 **A. No.**
 16 Q. Isn't it true that the policy of the City is to
 17 indemnify the service corporation directors for
 18 actions they take in their capacity as City employees?
 19 **A. I don't know that.**
 20 Q. You don't know if that's the policy of the City?
 21 **A. I do not. I know the City has an indemnification**
 22 **policy. I don't know if it applies to the service**
 23 **corporations.**
 24 Q. Okay, but does it apply to the City employees?
 25 **A. It applies to City employees acting within their**

1 **employees. I have not exercised that authority for**
 2 **all City employees.**
 3 Q. Okay. And you have the power to reduce those City
 4 employee salaries to zero if you choose, correct?
 5 **A. I think I do, yes.**
 6 Q. And you have done that on at least one prior occasion,
 7 I believe, correct?
 8 **A. Yes, I did do that.**
 9 Q. Okay. Now, are you aware that the insurers, the Swap
 10 insurers, like Syncora and FGIC, contend that the
 11 hedges cannot be terminated without their consent
 12 where there are termination events or events of
 13 default?
 14 **A. I have heard that. I m -- I have no independent**
 15 **awareness of that.**
 16 Q. So when did you first hear that?
 17 **A. I think it was all caught up in this time frame of**
 18 **the -- of the discussion after the agreement in**
 19 **principle, before the forbearance agreement was**
 20 **reached.**
 21 Q. Your best recollection is that you heard that prior to
 22 the execution of the forbearance agreement?
 23 **A. I believe it may have been prior to execution.**
 24 Q. But you have taken -- you have taken no steps to
 25 **evaluate whether the City concurs with the insurers'**

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1 construction on this point?

2 **A.** No. I don't think that's exactly true. I think there

3 were -- as I said before, there were a series of

4 letters and discussions that went on from the second

5 week of June throughout some point in July where I

6 believe there may have been discussions in that

7 regard, validity of that point.

8 **Q.** Okay. But if I ask you to express the City's view on

9 the legal merits of the insurers' contention that they

10 have the right to consent, you'll decline to answer

11 those questions because it tends to reveal the

12 attorney-client privilege.

13 **MR. SHUMAKER:** That's right and also calls

14 for a legal conclusion, yes.

15 **MR. HACKNEY:** But you'll -- I want to save

16 a big string of questions, so if I want to ask him

17 what are the pros and cons of the argument, who's

18 likely to win, how will it all come out --

19 **BY MR. HACKNEY:**

20 **Q.** You won't answer those questions on the grounds of

21 the -- because it would tend to reveal attorney-client

22 advice, correct?

23 **MR. SHUMAKER:** Well, I don't want to

24 prevent you from asking any questions and I don't --

25 but if he has an understanding independent of advice

1 **A.** I will assert the privilege.

2 **Q.** And if I ask you what are the arguments for and

3 against this point, you'll assert the privilege.

4 **A.** I will assert the privilege, but I am aware there are

5 a number of objections that have been filed in the

6 case that have addressed those issues and none of them

7 have caused me any surprise.

8 **Q.** If I said that the City -- if I asked you what the

9 City's view is on -- well, let me take a step back.

10 Do you agree that the insurers can block an

11 early termination of the Swap, that this would be

12 important to assessing whether the City was in danger

13 of owing a termination payment?

14 **MR. SHUMAKER:** Objection, calls for a legal

15 conclusion.

16 **A.** Yes, same thing. I'd only have a response to that

17 based upon discussions I've had with counsel.

18 **BY MR. HACKNEY:**

19 **Q.** Do you agree that the insurers can block a

20 termination, that it would make sense to negotiate

21 with the insurers to determine whether you can secure

22 their agreement not to consent to any termination?

23 **MR. JURGENS:** Objection, form.

24 **MR. SHUMAKER:** Same objection.

25 **A.** Same response. It would only be based upon

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1 he's given -- but clearly to the extent it's going to

2 reveal attorney-client communication, I will tell him

3 not to answer.

4 **MR. HACKNEY:** Okay. I'll ask him that.

5 **BY MR. HACKNEY:**

6 **Q.** Does the City concur in the insurers' view?

7 **MR. SHUMAKER:** Objection, calls for a legal

8 conclusion and could ask for attorney-client

9 communications.

10 **MR. HACKNEY:** Are you instructing him not

11 to answer?

12 **MR. SHUMAKER:** To the extent that the

13 question goes to that, yes.

14 **A.** Maybe I can help out in this line of questioning.

15 Any -- I have not acted as an attorney on this job for

16 the aforementioned reasons, so any opinion that I

17 would express on behalf of the City in this regard

18 would be solely as a result of communications with

19 counsel and discussions.

20 **BY MR. HACKNEY:**

21 **Q.** That was my expectation. So if I ask you if the City

22 concurred, that's going to get into what your lawyer

23 thinks.

24 **A.** That's exactly right.

25 **Q.** So you -- you will assert the privilege.

1 discussions I've had with counsel.

2 **BY MR. HACKNEY:**

3 **Q.** Are you aware that the insurers contend that they have

4 the right to control all actions that may be taken by

5 the Swap counterparties in connection with the -- with

6 the Swaps?

7 **A.** I am aware of that, yes.

8 **Q.** When did you first develop that awareness?

9 **A.** During some course of the correspondence that occurred

10 during this time frame that we previously discussed

11 today.

12 **Q.** And have you taken steps to evaluate whether the City

13 concurs with the insurers' construction of the

14 operative documents on this point?

15 **A.** Have we taken steps? Yes.

16 **Q.** Yeah. And what is the City's position?

17 **MR. SHUMAKER:** Objection, calls for the

18 provision of attorney-client communications, and I

19 will instruct him not to answer.

20 **BY MR. HACKNEY:**

21 **Q.** Yeah, I'm just going -- I'm making a record here.

22 Okay? I don't want to have -- I tried to --

23 **A.** I'm with you. I'm with you.

24 **Q.** And if I ask you what the arguments are on both sides

25 of this point, you'll also refuse to answer on the

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1 grounds of the privilege.
2 A. Here again, there are objections in the case that make
3 some of those arguments, but I will not specifically
4 answer.
5 Q. Because of the privilege.
6 A. Because of the attorney-client privilege and it calls
7 for a legal conclusion.
8 Q. And if I ask you who had the better side of the
9 argument, you would say the same thing?
10 A. Same thing.
11 MR. SHUMAKER: Same objection, same
12 instruction.
13 A. I would say the same thing. I would say the same
14 thing.
15 BY MR. HACKNEY:
16 Q. Do you agree that the insurers can control all actions
17 of the Swap counterparties in connection with the
18 Swaps, that this would be important in terms of
19 assessing whether the City should negotiate with the
20 insurers?
21 MR. SHUMAKER: Objection, foundation, calls
22 for a legal conclusion.
23 You can answer to the extent you have an
24 understanding.
25 A. It's also a little speculative because it's a

1 speculation.
2 A. Yeah, here again, I mean if that happened, possibly,
3 but that's a speculative question, so I'm going stay
4 away from it.
5 BY MR. HACKNEY:
6 Q. It is speculation, but it's logical --
7 A. As I said in my answer, a rational person would make
8 that --
9 Q. Yeah.
10 A. If you were put in a corner, you'd have to find some
11 way out, and negotiation might be one of those
12 sources, but to the extent your question is also
13 speculation, I'm going to defer from answering.
14 Q. Do you agree that the insurers are entitled to control
15 all of the actions of the Swap counterparties; it
16 raises the risk that the deal negotiated in the
17 forbearance agreement may be for naught?
18 MR. SHUMAKER: Objection, calls for
19 speculation.
20 A. Yeah, here again, maybe not.
21 BY MR. HACKNEY:
22 Q. Those are things you haven't -- you haven't considered
23 prior to today, fair statement?
24 A. That's a fair statement.
25 Q. Okay. Have you ever heard the phrase "play both ends

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1 hypothetical. If then is usually a hypothetical, so I
2 would -- for the same reasons as we discussed before,
3 I would say that to the extent it calls for a legal
4 conclusion, I'll refuse to answer.
5 I would say as a rational person, if you
6 were put in a corner, then you might want to consider
7 your alternatives, including negotiations.
8 BY MR. HACKNEY:
9 Q. With the insurers?
10 A. With whoever, yes, whoever's --
11 Q. I mean it's just a simple point. We have five minutes
12 left. I'm going to milk them.
13 A. Okay.
14 Q. But it's a simple point, which is if the insurers can
15 potentially direct, like a marionette, the actions of
16 the Swap counterparties, and I understand --
17 A. Right.
18 Q. -- that you're not agreeing with that --
19 A. Right.
20 Q. -- okay, but if they can --
21 A. Um-hm.
22 Q. -- they're a potential party that you can go negotiate
23 with to play off against the Swap counterparties,
24 correct?
25 MR. SHUMAKER: Objection, calls for

1 against the middle"?
2 A. Oh, have I ever heard the phrase?
3 Q. Yes.
4 A. Yes.
5 Q. You're a bankruptcy lawyer, right?
6 A. Yes.
7 Q. You were, I should say.
8 A. I was.
9 Q. And that's one of the time-honored tricks of
10 bankruptcy negotiation, right, is to play parties off
11 against one another to try and get the best deal?
12 A. I'm not going to call it a trick.
13 Q. Tools.
14 A. Tools, tactics. You know, there -- lawyer, as a
15 negotiator, getting a yes, discussing a number of
16 different alternatives.
17 Q. And one of them is playing off both ends against the
18 middle?
19 A. Could be. People do that all -- outside of legal
20 issues, they do that in negotiation.
21 Q. Isn't it true that prior to July 17 the City never
22 engaged in substantive negotiations with Syncora?
23 A. I don't know if that's true. You said July 17th?
24 Q. Yeah. That's the date of the execution of the
25 forbearance agreement.

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1 A. Right. I don't know if that's true. I believe there
2 were discussions that may have been, but you
3 characterize it as substantive negotiations, so I
4 don't know if that's true.
5 Q. You certainly didn't participate in any substantive
6 negotiations with Syncora, correct?
7 A. Well, I -- you know, you say negotiations. I know
8 there were a series of letters going back and forth
9 and I know that there was a letter -- I just don't
10 recall when I sent it -- to Mr. LeBlanc that said if
11 you want to have serious negotiations, then let's have
12 a discussion, but let's stop sending these letters
13 back and forth.
14 Q. But isn't it your position that there were no serious
15 negotiations with Syncora because Syncora would not
16 make a proposal?
17 A. I believe in one of those letters I expressed that
18 concern, yes.
19 Q. And to your knowledge Syncora never made a proposal to
20 the City of Detroit prior to July 17th, correct?
21 A. Yeah, I believe there was a discussion -- well, there
22 was discussion about an exchange of NDAs, and Syncora
23 said they wanted to make a proposal, but they first
24 wanted to see the proposal from the Swap
25 counterparties, and I believe in one of my letters to

1 July 17th, correct?
2 A. I believe -- July 17th?
3 Q. (Nods head).
4 A. I believe that's true. As I said, I think there was
5 some discussion about a potential offer from Syncora,
6 but I believe that got caught up in the NDA issue and
7 that went away, so yes, I believe that's true.
8 Q. And your recollection in the NDA issue is that the
9 City wanted an NDA, but Syncora wouldn't sign it?
10 A. My recollection -- no. My recollection was the City
11 needed an NDA because we were asking all parties --
12 nondisclosure agreement, we were asking all parties to
13 sign them. There was some discussion -- I put in a
14 letter, I seem to recall, that Syncora sign one, but I
15 don't want to speculate or mischaracterize. There
16 were some discussion about a NDA before Syncora would
17 show us their proposal and something about they wanted
18 to see the Swap counterparties' proposal before
19 signing an NDA first or something along those lines.
20 Q. You're not aware of any situation where the City
21 refused to sign an NDA with Syncora, correct?
22 A. No, not that I'm aware of.
23 Q. In fact, it was the City that wanted an NDA with
24 Syncora?
25 A. Yes. I believe that's true.

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1 Mr. LeBlanc, I said well, the parties need to sign a
2 NDA, and my understanding was Syncora declined to do
3 that.
4 MR. HACKNEY: Let's actually take a break
5 right now in light of the videotape and maybe we can
6 use it as a chance to stretch our legs and use the
7 restroom.
8 VIDEO TECHNICIAN: The time is 10:04 a.m.
9 This marks the end of tape number 1. We are off the
10 record.
11 (Recess taken at 10:04 a.m.)
12 (Back on the record at 10:14 a.m.)
13 VIDEO TECHNICIAN: We are back on the
14 record at 10:14 a.m. This marks the beginning of tape
15 number 2.
16 BY MR. HACKNEY:
17 Q. Mr. Orr, I kind of want to cut through this with
18 Syncora. I understand that there were letters back
19 and forth between you and Syncora.
20 A. Yes.
21 Q. But I just want to make clear for the record that
22 there were not substantive negotiations of the type
23 that you engaged in with the Swap counterparties with
24 Syncora about an alternative proposal to the
25 forbearance agreement prior to its execution on

1 Q. And it's also true that you did not engage in
2 substantive negotiations with FGIC about an
3 alternative to the forbearance agreement prior to
4 July 17th, correct?
5 A. Yeah, with regard to the issue of substantive, I'll --
6 I'll, you know, caution that I'm not -- I'm not
7 necessarily characterizing, but to the best of my
8 knowledge, that's a fair characterization.
9 Q. You didn't make a proposal about an alternative to
10 FIGC and FIGC didn't make one to you.
11 A. Yes, to the best of my knowledge, that's true.
12 Q. And that's also true with respect to Syncora, correct?
13 A. Yes, that's true.
14 Q. Now, I think you've testified previously that no
15 proposal was forthcoming from Syncora in connection
16 with the TRO proceedings.
17 A. Okay.
18 Q. I'll just represent that to you --
19 A. Okay.
20 Q. -- as a way of --
21 A. Yeah. In one of my affidavits --
22 Q. That's right.
23 A. -- or something, yeah.
24 Q. Were you aware that Mr. Buckfire had had a
25 conversation with Todd Snyder of Syncora?

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1 A. As I said, there were -- you know, during this --
 2 there were many conversations that were going back and
 3 forth and I wasn't necessarily aware of all of them.
 4 I knew they were -- they were going back and forth,
 5 but it is -- if that's true, it wouldn't surprise me.
 6 Q. So you don't remember it as you sit here today?
 7 A. No, I do not.
 8 Q. Okay. Because this was in the -- this was in the
 9 period of where the cash was being trapped.
 10 A. Right. But, sir, here again, there were so many -- so
 11 many discussions going back and forth about so many
 12 things. I mean in this period we were dealing with
 13 the June 10th meeting, the June 14th creditor's
 14 presentation, trying to do the Swap settlement, the
 15 run up to my quarterly report. There were just --
 16 there were a lot of conversations about a lot of
 17 things. I simply don't remember.
 18 Q. Okay. And I take it you don't recall that Mr. --
 19 whether Mr. Buckfire told you that Syncora had
 20 described to him the general structure of a proposal
 21 it wanted to make?
 22 A. He may have. I just don't recall it.
 23 Q. Okay. It's true, isn't it, that as of the date of the
 24 execution of the forbearance agreement, your office
 25 had received multiple calls from Claude LeBlanc at

1 Q. We can say that there are lots.
 2 A. There are lots.
 3 Q. Okay.
 4 A. Okay.
 5 Q. And there's no reason you can think of today that the
 6 City wouldn't enter into one with Syncora.
 7 A. No.
 8 Q. Were you aware that Syncora wanted a nondisclosure
 9 agreement so that it could make a proposal that would
 10 be an alternative to the Swap counterparties?
 11 A. As I said, I believe I have a letter that discusses
 12 the NDA issue, but it was caught up in something
 13 related to Syncora -- as I understood it, Syncora
 14 wanting to see the Swap counterparty proposal first
 15 prior to entering an NDA.
 16 Q. Did you ever hear that Syncora had gotten over that
 17 issue and was now willing to just make a proposal to
 18 the City?
 19 A. No.
 20 Q. So no one ever told you that?
 21 A. No, I don't recall ever hearing that.
 22 Q. Okay. Would that have been significant to you if you
 23 heard that?
 24 MR. SHUMAKER: Objection, calls for
 25 speculation.

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1 Syncora, correct?
 2 A. I'm not aware of that. There may have been multiple
 3 calls, but I'm not aware -- I received no calls.
 4 Q. Okay. So you don't -- I take it your secretary --
 5 A. My office may have. Yeah, my secretary may have, but
 6 I didn't.
 7 Q. So you don't know whether he called you or not?
 8 A. If you're representing to me that he did, I have no
 9 reason to believe that that's untrue.
 10 Q. Okay. And I take it you have never called personally
 11 Mr. LeBlanc --
 12 A. No.
 13 Q. -- isn't that correct?
 14 A. No, I don't think so.
 15 Q. So you didn't return those calls if they were made?
 16 A. No.
 17 Q. I just want -- I guess I -- the City has entered into
 18 numerous nondisclosure agreements --
 19 A. Right.
 20 Q. -- in these cases, correct?
 21 A. Yes.
 22 Q. I mean has it entered into hundreds?
 23 A. I don't know. I don't -- I don't operate the data
 24 room or any others, but I suspect there's certainly
 25 many.

1 A. Yeah. Here again, it depends upon what point in time,
 2 if we were already bound by the definitive term sheet
 3 and then -- or the agreement, I believe the
 4 forbearance agreement has an obligation we cooperate
 5 with Swap counterparties, so it wouldn't have mat --
 6 no, it would not have mattered at that time, so it
 7 depends on when that would have occurred.
 8 BY MR. HACKNEY:
 9 Q. But if it was prior to July 17th, if there were any
 10 parties that were out there that thought they had a
 11 good deal for the City, that would have been something
 12 you wanted to know?
 13 A. We are always willing to listen to parties that think
 14 they have a good deal for the City.
 15 Q. Isn't it true that the City's decision to enter into
 16 the forbearance agreement was made by you, in your
 17 role as emergency manager?
 18 A. Yes, after consultation with my -- with my employees,
 19 staff and consultants, yes.
 20 Q. And when did you make that decision?
 21 A. To enter into the actual agreement?
 22 Q. Yes.
 23 A. The day I signed it.
 24 Q. July 15th, 2013?
 25 A. I believe so, yes.

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1 Q. And what advisors did you rely upon in making this
2 decision?
3 A. My attorneys, Mill -- my investment banker, Miller
4 Buckfire; our accountants, Ernst & Young; virtually --
5 virtually -- Conway McKenzie, our operational advisor,
6 virtually all of them.
7 Q. All of your third party advisors?
8 A. Yes, yes.
9 Q. And anyone else that you relied upon in making the
10 decision?
11 A. Oh, probably members of my immediate staff such as my
12 senior advisor, chief of staff, but less so. More of
13 my outside third party advisors.
14 Q. What documents did you rely upon in making the
15 decision, if any?
16 A. We looked at a number of -- the term sheet, the actual
17 draft of the forbearance agreement. There may have
18 been some e-mails. I just recall a lot of telephone
19 calls. There may have been some forecast, cash
20 forecast, and actuals, and some of the public reports
21 I had issued regarding our cash position.
22 Q. Any other documents you can remember considering as
23 part of this decision to enter into the forbearance
24 agreement?
25 A. There may have been correspondence. As I said, there

1 A. Yeah. That's a --
2 MR. SHUMAKER: Object to form.
3 A. That's a fair characterization. As I said, I'm trying
4 to stay away from acting as an attorney in this job.
5 BY MR. HACKNEY:
6 Q. Okay.
7 A. For a number of reasons.
8 Q. So you relied on your advisors to explain to you how
9 the COP Swap agreements worked?
10 A. Yes.
11 Q. And you also relied on them to explain to you how the
12 COP Swap agreements worked in conjunction with the
13 forbearance agreement that you were about to execute?
14 MR. JURGENS: Object to form.
15 A. Yes.
16 BY MR. HACKNEY:
17 Q. So what is the relationship between the forbearance
18 agreement and the COPs Swap structure?
19 A. Well, my understanding is that the forbearance
20 agreement is related to the Swaps structure, but that
21 the COPs structure is unrelated.
22 Q. Okay. So the forbearance agreement is part of the
23 same subject matter as the collateral agreement and
24 the Swaps agreement, but not the COPs part of the
25 structure?

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1 were letters that were exchanged between Mr. LeBlanc
2 and myself, and others, the letter you showed me
3 today. I'm just trying to capture the universe of
4 what would have been included, but any -- any and all
5 documents related to this that I would have seen would
6 probably fall under that characterization.
7 Q. Any legal memoranda from Jones Day that you considered
8 in making this decision?
9 A. Yes, probably.
10 Q. Okay. Written legal memoranda that you reviewed?
11 A. Yeah, including e-mails. Yeah.
12 Q. Now, did you take time to familiarize -- to
13 familiarize yourself with any of the legal documents
14 relating to the COPs Swap structure in connection with
15 your decision to execute the forbearance agreement?
16 A. I relied -- I may have seen them, but I relied upon
17 consultation with my counsel and investment bankers.
18 Q. The documents I'm referring to are -- can we agree
19 they're relatively complicated legal documents?
20 A. Yeah, I'd say they're not simple documents. It's not
21 a -- you know, an auto purchase contract, yeah.
22 Q. Right. So can I fairly characterize that -- that you
23 may have looked at the documents, but you didn't
24 attempt to master -- master them in terms of their
25 legal ins and outs?

1 A. That's my understanding.
2 Q. Okay. In your legal career, have you come across the
3 concept of the idea that two different contracts can
4 be part of one integrated transaction?
5 A. Sure. Yes.
6 Q. You're familiar with that as an idea?
7 A. Oh, yeah, sure.
8 Q. Okay. What do you understand that to mean?
9 MR. SHUMAKER: Objection, form.
10 A. There are a number of ways that two different
11 documents were -- may refer to the other, as simple as
12 attachments, exhibits, the master -- the master
13 service agreement on a loan, for instance. There are
14 a number of ways that one document can relate to
15 another as explicitly expressed and intended.
16 BY MR. HACKNEY:
17 Q. Yeah, and I know this is a -- you know, we're not
18 talking about was the stoplight red or green here, but
19 you are also a lawyer with a relatively --
20 A. I was.
21 Q. -- sophisticated clientele and experience?
22 A. Well --
23 Q. You understand the idea that two different contracts
24 can form part of one larger agreement?
25 A. Oh, sure. Yeah.

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1 Q. Is the forbearance agreement part of an integrated
2 transaction with the amended Swap agreements?
3 MR. SHUMAKER: Objection, calls for a legal
4 conclusion.
5 A. Yeah, I'm going to stay away from characterizing it as
6 an integrated transaction. That may have legal
7 consequence. I know they are related.
8 BY MR. HACKNEY:
9 Q. Okay. They are related, but you can't answer today
10 whether they're part of an integrated transaction as
11 the person who executed it on behalf of the City?
12 A. Yeah.
13 MR. SHUMAKER: Same objection.
14 A. Yeah, because -- because of legal implications of
15 using that nomenclature.
16 BY MR. HACKNEY:
17 Q. Okay. So it may be, it may not be, you just don't
18 know?
19 A. Precisely. I'll rely on the attorneys to characterize
20 that.
21 Q. Is the forbearance agreement part of an integrated
22 transaction with the collateral agreement?
23 MR. SHUMAKER: Same objection.
24 A. Same answer. I'll rely on the attorneys to
25 characterize it as integrated. I know I signed the

1 legal question?
2 A. I'm saying I can't reveal attorney-client
3 communications, and based upon the characterization, I
4 have formed no independent decision outside of
5 discussions with my attorney as to whether or not
6 they're integrated.
7 Q. Okay. Let me ask you the reverse question, which is,
8 is the forbearance agreement a separate agreement from
9 the collateral agreement?
10 A. Is it a separate agreement?
11 Q. Yeah.
12 A. I believe it's related to it, but yeah, it was a
13 separate agreement, sure. It wasn't entered into
14 contemporaneously.
15 Q. Meaning one that does not form part of a common
16 agreement with the collateral agreement?
17 A. Here again, you're using a characterization as common
18 agreement or integrated. I'm going to stay away
19 because those may have legal connotations. What I
20 know is the forbearance agreement was entered into in
21 2009, and the collateral agreement attempts to resolve
22 issues of default that are raised by the forbearance
23 agreement and also including obligations of the City.
24 Q. Isn't it -- I'd like to shift and ask you a question
25 about the service agreements between the City and the

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1 forbearance agreement.
2 BY MR. HACKNEY:
3 Q. You did?
4 A. Yes.
5 Q. So it may be, it may not be, you don't know?
6 A. Correct.
7 Q. And did you consider any of those questions when you
8 entered into the forbearance agreement?
9 A. We may have had some discussions. The question such
10 as whether they're integrated or supersede or are
11 related may have been discussed.
12 Q. But as you sit here today, you can't answer my
13 question about whether it is integrated into other
14 agreements or not?
15 A. True. I'm going to re -- because of the possible
16 legal implications of anything I say, I'm going to
17 rely on our counsel.
18 Q. Okay. Well, I guess there are legal implications of
19 all of the testimony that you give today --
20 A. Yeah.
21 Q. -- both good and bad.
22 A. Right.
23 Q. So I guess are you saying that you can't reveal
24 attorney-client communications or are you saying that
25 you just don't know the answer to this particular

1 service corporations.
2 A. Okay.
3 Q. Isn't it true that the City is in default of its
4 obligations under the service agreements because it
5 missed the --
6 A. June 14th payment?
7 Q. That's right.
8 A. We're in default.
9 Q. Okay. And isn't it also true that the City is not
10 proposing to cure those defaults in connection with
11 the assumption of the forbearance agreement?
12 A. I believe that's true.
13 Q. And you would agree that the City is not going to
14 provide assurances that it will perform with the
15 service agreements in the future, correct, as part of
16 the assumption motion?
17 A. I'm going to be careful here because we're -- we're
18 trying to have discussions about what we're going to
19 do with regard to the proposal, so I don't want to say
20 now something that may or may not occur in the future,
21 but there is no present intent -- in response to your
22 question, no present intent to do that.
23 Q. You certainly haven't represented that you will as
24 part of the assumption motion?
25 A. Yes.

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1 Q. We talked about this earlier. I don't want to reask
2 the question, but I want to tie it up in connection
3 with the assumption motion, which is, there are also
4 events of default existing under the Swaps.
5 A. Yes.
6 Q. Those are the cause of all the problems, right?
7 A. Yes.
8 Q. The City is not proposing to cure those defaults in
9 connection with the assumption agreement, correct?
10 A. I'm going to be careful with the characterization of a
11 cure because, as you know, and -- I have formed no
12 independent decision as to whether or not that
13 nomenclature's true. What I will say is that pursuant
14 to the forbearance agreement we are attempting to
15 resolve any and all defaults that may have occurred
16 under the collateral agreement.
17 Q. Under -- and I was asking about the Swaps.
18 A. And the Swaps.
19 Q. And the Swaps.
20 So the forbearance agreement is an effort
21 to resolve any defaults that exist under the
22 collateral agreement and amended Swaps?
23 A. Yes.
24 Q. Okay. And in your view it does that?
25 A. Yes.

1 in addition, obligates those parties to release liens
2 and potential claims as a result of the transaction.
3 Q. Okay. So the practical impact of it -- put aside the
4 legal beagle words.
5 A. Right.
6 Q. The practical impact of it is during the optional
7 termination period, the Swap counterparties waive
8 whatever rights they have under the Swaps and the
9 collateral agreement to either demand cash or to
10 terminate the Swap?
11 A. Yeah, here --
12 MR. JURGENS: Object to form.
13 MR. SHUMAKER: Objection, calls for legal
14 conclusion and form.
15 A. Here again, I'm going to stay away from whether or not
16 they waive. What it says is forbearance, and my
17 understanding is that they forebear from exercising
18 any of those rights during the operative terms of the
19 agreement.
20 BY MR. HACKNEY:
21 Q. We talked about the benefits of the forbearance
22 agreement before. I'm going to try and summarize your
23 prior testimony to try and move us along, but you
24 should listen to my summary and see if I'm correct.
25 A. Okay.

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1 Q. Okay.
2 A. Yes.
3 Q. So I'll say it this way. In your assumption motion,
4 isn't it true the City doesn't promise to cure any
5 defaults under the collateral agreement or the Swap
6 agreement; isn't it that correct?
7 A. Here again, and I'm not trying to be evasive. I
8 just -- you know, there are concepts of cure in the
9 bankruptcy code, for instance, with regard to the
10 assumptions of contracts so on and so forth, and I
11 want to make sure that I don't testify as to a legal
12 conclusion. So what I will say is we are trying -- by
13 the assumption agreement and forbearance agreement, we
14 are trying to resolve all defaults under those
15 documents, both the collateral agreement and the
16 Swaps.
17 Q. Okay. And how does it achieve that resolution?
18 A. Well, the documents speaks for itself, but generally
19 speaking, it imposes obligations upon us to perform a
20 certain ways within certain time frames with regard to
21 the potential termination payment. It therefore gives
22 us a discount for that payment. It releases the
23 casino revenue and imposes obligations, and this is my
24 language, upon the Swap counterparties not to trap
25 that revenue upon performance of certain obligations,

1 Q. But the benefits of the forbearance agreement are
2 access to the casino revenues during the option
3 period, a workable unwind of the Swaps, and a
4 discounted termination payment?
5 A. And a release of liens and potential claims against
6 the insured, yes.
7 Q. Correct. Those are kind of some of the key elements
8 of the forbearance agreement.
9 A. Yes.
10 Q. I want to start with the casino gaming revenues.
11 A. Um-hm.
12 Q. How does the forbearance agreement provide the City
13 with better access to gaming revenues than it has
14 right now?
15 A. Well, as -- I think as we discussed earlier today,
16 there's always the risk that because there are events
17 of default under the Swaps, that those revenues
18 could -- that default could be declared and those
19 revenues could be trapped, so it removes that level of
20 uncertainty, which is crucial for the City. Cash is
21 critical for the City.
22 So once you remove that level of
23 uncertainty and the City has certainty, as we've seen
24 in some of our proposals that we made for creditors,
25 the City can then reasonably count on having access to

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1 that cash in terms of going forward.

2 Q. Now, if the collateral agreement operates the trapped

3 cash automatically upon an event of default under the

4 Swap --

5 A. Um-hm.

6 Q. -- is there anything in the forbearance agreement that

7 alters that mechanism?

8 MR. SHUMAKER: Objection, calls for legal

9 conclusion.

10 A. Yeah, here again, your conclusion if it acts to trap

11 automatically, I don't know if I would characterize it

12 that way. I know that the agreements work that money

13 comes in on a daily basis. That money is put into I

14 think one account. At the end of each month, some

15 portion of that money is sent out to another account,

16 and every quarter that money is disbursed. I'm not

17 going to characterize as to whether or not it would --

18 it would change that mechanism automatically.

19 BY MR. HACKNEY:

20 Q. Okay. You can't say if it does or it doesn't?

21 A. Correct.

22 Q. And can you say here today whether the collateral

23 agreement operates automatically or does not?

24 A. The collateral agreement, it's my understanding, using

25 your words automatically, operates to trap cash, but

1 automatically.

2 Q. Okay. And is that based on conversations you've had

3 with counsel?

4 A. Yes.

5 Q. And if I ask you for the pros and cons of that

6 argument as to who's likely to win and how the City

7 came to its view, you would refuse to answer those

8 questions on the basis of the attorney-client

9 privilege, correct?

10 A. Yes, sir.

11 Q. Now, you also mentioned that the forbearance

12 agreement -- or we talked about the idea that the

13 forbearance agreement provides for a workable unwind

14 of the Swap, correct?

15 A. Right.

16 MR. JURGENS: Objection to form.

17 BY MR. HACKNEY:

18 Q. How does it do that?

19 A. Well, my understanding, as I said before, in the

20 forbearance agreement, the parties agree to certain --

21 certain events that we will pay -- meaning the City --

22 will pay a discount, an optional termination payment

23 or cause that payment to be made; that in

24 consideration for that payment, the parties to the

25 agreement will release any claims they have to

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1 maybe not in the way that is detrimental to the City.

2 It has two accounts, a subrecipient holding account --

3 COURT REPORTER: Subrecipient?

4 THE WITNESS: Subrecipient.

5 A. -- two accounts, an initial general account and then a

6 subrecipient account. We'll just call them that.

7 Those monies come in -- so when you use

8 automatic, those monies come in daily, but they're

9 disbursed according to the terms, and have been

10 disbursed according to their terms.

11 Q. I'm not talking about interim trapping that --

12 A. Right.

13 Q. -- happens in the first part of the month until the

14 whole bank account builds up.

15 A. Right.

16 Q. I'm talking about what I'll call big time cash

17 trapping upon an event of default --

18 A. Right.

19 Q. -- or termination event.

20 A. Right.

21 Q. So let me go back. I guess my question is, like, do

22 you have a view on whether that big time cash trapping

23 is supposed to happen automatically under the

24 collateral agreement?

25 A. My understanding is that it does not happen

1 trapping the casino revenue; and, here again, the

2 parties will release their liens and any potential

3 claims they have against the insured.

4 Q. The discount that you obtained through the

5 negotiations that Mr. Buckfire led --

6 A. Right.

7 Q. -- is a discount to the so-called early termination of

8 the Swap.

9 A. Yes.

10 Q. Correct?

11 A. Yes.

12 Q. So if you just read the Swap agreement, it would -- it

13 implies a termination value, correct?

14 MR. JURGENS: Objection, form.

15 MR. SHUMAKER: Objection, Calls for --

16 BY MR. HACKNEY:

17 Q. It implies an early termination value?

18 MR. JURGENS: Objection to form.

19 A. We'll use a nomenclature. It implies a value for

20 termination fee that I understand represents the loss

21 expectation of the counterparties.

22 BY MR. HACKNEY:

23 Q. That's exactly right.

24 And the discount you negotiated in the

25 forbearance agreement is a discount to that amount in

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1 the Swap?

2 MR. JURGENS: Objection to form.

3 MR. SHUMAKER: Objection to form.

4 A. It is a discount to that, yes. It is a discount to

5 that expected amount.

6 BY MR. HACKNEY:

7 Q. Yeah. It is a discount to what would otherwise be

8 owing under the Swap in the absence of the forbearance

9 agreement if the Swap counterparties designated an

10 early termination.

11 A. I believe that's correct.

12 MR. JURGENS: Objection to form.

13 BY MR. HACKNEY:

14 Q. Okay. Now, you know that there's a different concept

15 which is an optional early termination under the Swap,

16 correct?

17 A. Um-hm.

18 Q. Is that correct?

19 A. Well, the way the agreement is worded, forbearance and

20 optional termination --

21 Q. I'm not talking about the forbearance agreement.

22 A. Okay.

23 Q. I'm sorry if that wasn't clear --

24 A. Oh.

25 Q. -- and I don't mean to interrupt you.

1 Q. I'm just talking about with respect to the Swap.

2 Interest rates are favorable for the Swap

3 counterparties.

4 A. On -- and I'm going to be careful here because on any

5 given day interest rates might swing and be favorable

6 to us based upon what we might owe, but generally

7 speaking, if you're saying -- what do you mean by in

8 the money?

9 Q. Yeah. So what I mean is if the Swap was terminated

10 today --

11 A. Right.

12 Q. -- it's the service corporations that would owe money

13 to the Swap counterparties, not the Swap

14 counterparties that would owe money to the service

15 corporations.

16 MR. JURGENS: Objection.

17 MR. SHUMAKER: To be clear, the Swap

18 counterparties are UBS and Merrill Lynch.

19 A. Yeah.

20 BY MR. HACKNEY:

21 Q. That's what I mean by in the money.

22 A. Yeah, I -- I think that's true.

23 Q. Okay. I mean that's -- I'm not trying to be flip, but

24 that is the reason that you negotiated the discount?

25 A. That's the mechanism, yes. Yeah.

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1 A. Okay.

2 Q. Under the Swap --

3 A. Right.

4 Q. -- there is a different type of termination that's

5 called an optional early termination. Are you aware

6 of that?

7 A. I am aware of that.

8 Q. Okay. That's one where the insured -- the Swap

9 counterparties contend that they can terminate the

10 Swap and walk away with no payment.

11 A. Any understanding I would have about what the Swap

12 counterparties can do would be based upon

13 consultations with counsel, but suffice it to say I

14 have heard of that concept.

15 Q. Okay. So if I ask you about the pros and cons of that

16 argument and who would likely to win, you would assert

17 the attorney-client privilege; is that correct?

18 MR. SHUMAKER: We would.

19 A. Yes.

20 BY MR. HACKNEY:

21 Q. Okay. But I do want to say that you understand that

22 the Swap counterparties are substantially in the money

23 under prevailing interest rates, correct?

24 A. There is a lot of money that the City's going to owe,

25 yes.

1 Q. Okay. I want to make an obvious point, which is the

2 Swap counterparties have never come to the City and

3 said hey, we're going to exercise that optional early

4 termination rights that has us walking away and being

5 paid nothing, correct?

6 MR. JURGENS: Form.

7 MR. SHUMAKER: Objection form, too.

8 A. To the best of my knowledge, I've never heard that.

9 BY MR. HACKNEY:

10 Q. Obviously if they had, you would have been --

11 COURT REPORTER: I'm sorry.

12 BY MR. HACKNEY:

13 Q. Let me -- if you had heard them threaten that, it

14 would have made Mr. Buckfire's negotiation a lot

15 easier.

16 A. I think it would have made the entire situation a lot

17 easier, but I've never heard that.

18 Q. They've never offered to walk away without any

19 payment.

20 A. I've never heard them offer to walk away without a

21 payment.

22 Q. Okay. Too bad.

23 A. I'm more than willing to accept that offer.

24 Q. I was going to say we're all open, right?

25 A. Right.

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1 Q. I want to go back to the forbearance agreement. We
2 were talking about the things that it does in terms of
3 providing access to casino revenues, allowing for an
4 unwind of the Swap. These were my descriptions of
5 it --

6 A. Right.

7 Q. -- candidly, from your motion --

8 A. Right.

9 Q. -- but we were talking generally about these things.
10 The valuable consideration that the City gets under
11 the forbearance agreement are all things that it can
12 exercise without any consent from any other party,
13 correct?

14 MR. SHUMAKER: Objection, calls for a legal
15 conclusion.

16 You can answer.

17 A. That's my understanding of the way it works, yeah.

18 BY MR. HACKNEY:

19 Q. Do you agree that the effect of the forbearance
20 agreement, if the option is exercised, is to modify
21 the amount of the termination payment owed under the
22 Swaps down to whatever percentage is applicable as of
23 that date?

24 MR. JURGENS: Objection to form.

25 MR. SHUMAKER: Objection, form, calls for a

1 MR. HACKNEY: I understand you want to
2 preserve objections. This is the individual who
3 signed the agreement --

4 A. Yeah, the --

5 MR. HACKNEY: -- so I'm asking him for his
6 understanding.

7 MR. SHUMAKER: Okay. That's fine.

8 A. Yeah, the mechanism is such that it's not our
9 termination, that it's the parties -- it's the
10 counterparties' termination.

11 BY MR. HACKNEY:

12 Q. That's right. It's their termination right, but the
13 City gets to direct them to exercise it.

14 A. Correct.

15 Q. Okay. Is that a right that the City currently
16 possesses under any of the other agreements to the
17 best of your knowledge?

18 A. To the best of my knowledge, no.

19 Q. That's a right it obtained as a result of the
20 forbearance agreement, correct?

21 A. Correct.

22 Q. And the City's able to exercise that right to direct
23 the actions of the Swap counterparties without the
24 consent of any third party, correct?

25 A. To the best of my knowledge, that's true.

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1 legal conclusion.

2 A. If you're talking about the forbearance agreement and
3 the formula that's involved for the percentage change
4 depending upon -- as linked to time, as well as the
5 requirement that we get approval of the agreement at a
6 certain time period, yes, that's true.

7 BY MR. HACKNEY:

8 Q. Okay. I mean the effect of the forbearance agreement
9 is that instead of owing what the City would owe under
10 the Swap, which is the hundred percent of the
11 termination value, it now owes -- only owes the
12 discounted amount?

13 A. Yes.

14 Q. So the effect is that it modifies that provision in
15 the Swap in a way that's favorable for the City?

16 MR. JURGENS: Objection to form.

17 A. That's a fair characterization.

18 THE WITNESS: Sorry.

19 BY MR. HACKNEY:

20 Q. Now, the forbearance agreement, another part of it,
21 that it allows the City to direct the Swap
22 counterparties to terminate the Swap, correct?

23 MR. SHUMAKER: Objection, calls for a legal
24 conclusion.

25 MR. JURGENS: Objection.

1 Q. Now, if Syncora has the right to control all actions
2 of the Swap counterparties under the contract
3 administration agreement, your position is that the
4 forbearance agreement overrides that provision in the
5 contract administration agreement; is that correct?

6 MR. SHUMAKER: Objection, calls for
7 speculation.

8 A. I think it calls for speculation and it also
9 essentially implies a legal analysis. I will defer to
10 my counsel as to what our position would be. What I
11 do know is that forbearance agreement gives us certain
12 rights.

13 BY MR. HACKNEY:

14 Q. Okay. What if I said that when it comes to the
15 interaction between Syncora's alleged control rights
16 under the contract administration agreement and the
17 City's alleged control right under the forbearance and
18 optional termination agreement, you would refuse to
19 answer those questions on the grounds that it would
20 get into attorney-client advice that you've received
21 from your counsel, correct?

22 A. That is correct.

23 MR. SHUMAKER: It most likely would,
24 depending upon how you phrased the question.

25 MR. HACKNEY: I'm asking.

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1 A. Yeah, no. These issues I have discussed with my
2 counsel. We have discussed pros and cons as I said
3 earlier today, and as you notice, although I'm not an
4 attorney here, I've practiced before, none of this
5 surprises me. Some of these issues are expressed in
6 the objections. It's just that I want to be very
7 careful about relaying to you any of my perceptions
8 about these issues based upon discussions I've had
9 with counsel.

10 Suffice it to say we think that I have the
11 right -- the City has the right under forbearance
12 agreement to exercise its rights under that agreement.

13 BY MR. HACKNEY:

14 Q. Okay. So -- but you -- you can't give me your
15 understanding of how Syncora's alleged rights under
16 the contract administration agreement interact with
17 the City's alleged rights under the forbearance
18 agreement.

19 A. I can't do that without implicating conversations I've
20 had with my counsel.

21 Q. And just for the record, you won't?

22 A. And I won't.

23 Q. That's right.

24 A. And I won't, yes.

25 Q. What are the downsides of the forbearance agreement to

1 direct U.S. Bank to trap the casino revenues; isn't
2 that correct?

3 A. I think if there were events of default, and here they
4 are, yes.

5 Q. Yeah. That was a driver of the negotiation --

6 A. Yes.

7 Q. -- correct?

8 A. Certainly is, yes.

9 Q. And your understanding is that as part of the
10 forbearance agreement during the -- during the --
11 during the forbearance period, the Swap counterparties
12 have temporarily relinquished that right to direct
13 cash trapping so long as the optional termination
14 period is pending.

15 A. Yes, they are forbearing from exercising their right.

16 Q. Okay. Now, you understand that cash passes through
17 the general receipts subaccount on a monthly basis.
18 We talked about that earlier.

19 A. Right.

20 Q. It's trapped until a certain point and then the City
21 makes the holdback account, and when they get --
22 become equal, there's a discharge of payment to the
23 City from the general receipts subaccount, and then
24 for the remainder of the month, the City gets access
25 to the casino revenues, correct?

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1 the City?

2 A. From my perspective?

3 Q. Yeah.

4 A. None.

5 Q. So this agreement that Mr. Buckfire negotiated is one
6 of those happy agreements. It's all upside and no
7 downside.

8 A. It's not happy. I mean, I'm not going to characterize
9 it as happy. There's a significant sum of money that
10 the City has got to pay, but it does remove a certain
11 amount of uncertainty and allows the City to be able
12 to plan to make the reinvestment that's crucial for it
13 to go forward. So I wouldn't characterize it as happy
14 by any means, but it's an obligation that the City
15 entered into a long time ago -- several years ago --
16 that we have to resolve so we can have unfettered
17 access to the casino revenue.

18 Q. I want to go back to the subject of cash trapping
19 really quick because we had just moments ago talked
20 about whether it worked automatically --

21 A. Right.

22 Q. -- or whether it worked upon notice.

23 A. Right.

24 Q. But prior to the forbearance agreement, it was your
25 view that the Swap counterparties had the right to

1 A. Yes. My understanding is about \$500,000 a day are
2 paid into those accounts and the mechanism is very
3 similar to what you said --

4 Q. Okay.

5 A. -- how it operates.

6 Q. Can we agree that the way the forbearance agreement
7 works is that certainly between July 17th and now and
8 from now to whenever the forbearance, the option is
9 either exercised or expires, there's going to be cash
10 that passes through this account, already passed
11 through the account, that goes to the City?

12 A. Yes. There should be.

13 Q. If the option expires without the City's exercise of
14 the option, isn't it true that under the forbearance
15 agreement, the City has no obligation to put that cash
16 back into the -- into the general receipts subaccount?

17 MR. SHUMAKER: Objection, calls for a legal
18 conclusion.

19 A. I --

20 BY MR. HACKNEY:

21 Q. Just asking for your understanding of how the
22 agreement works.

23 A. Sure. And my understanding of how the agreement
24 works, without having it in front of me and consulting
25 counsel, is the parties revert back to the status quo

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1 ante as where they were, and I do not recall that
2 there's an obligation for remitter (sic) --
3 Q. Yeah.
4 A. -- of monies that were paid during the forbearance
5 period.
6 Q. And the agreement does speak for itself. I'm just
7 asking for your understanding of the agreement.
8 A. That's my understanding.
9 Q. I have read the agreement, and my reading of
10 Section 1.2(c) of the agreement is that when the
11 option expires without being exercised, that it's just
12 as you said, everyone is restored to the status quo
13 ante, but the City doesn't have to put the money it
14 received back in the -- in the interim back into the
15 account.
16 A. Right, which is status quo because we would have
17 received that money in any event.
18 Q. Okay. But what I just said is also your
19 understanding?
20 A. Yes.
21 Q. Can we agree that -- we talked about waiver and
22 forbearance and they are two different concepts, but
23 can we agree that the Swap counterparties have
24 certainly waived their right to obtain the cash that
25 passes through the account during the option period?

1 terms of each Swap agreement, it is the view of the
2 Swap counterparties that one or more events of default
3 and/or additional termination events has occurred,
4 with the service corporations" -- "with the service
5 corporation as the defaulting party or sole affected
6 party, and therefore each of SBS and UBS has the right
7 to designate an early termination date for the related
8 Swap agreements."
9 Do you see that?
10 A. Yes, I do.
11 Q. I have a long set of questions here that I would like
12 to collapse if I could, which is, this just says it's
13 the view of the Swap counterparties. The fact of the
14 matter is it's also the City's view that there are
15 termination events and events of default existing
16 under the Swap.
17 A. Yes, I think that's fair.
18 Q. And that as a result of those termination and events
19 of default in the absence of this agreement, the Swap
20 counterparties would have the right to designate an
21 early termination date.
22 A. Yes.
23 Q. If I asked you to catalog all of the termination
24 events and events of default under the Swap, would you
25 be able to do that?

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1 MR. SHUMAKER: Objection, calls for a legal
2 conclusion.
3 MR. JURGENS: Objection to form.
4 A. I'm going to stay away from characterizing what
5 consequences are if we don't exercise the option under
6 the agreement.
7 BY MR. HACKNEY:
8 Q. Let me hand you this forbearance agreement.
9 A. Okay.
10 Q. I've marked it as Orr Exhibit 2.
11 A. Okay.
12 MARKED FOR IDENTIFICATION:
13 DEPOSITION EXHIBIT 2
14 10:48 a.m.
15 A. Okay.
16 BY MR. HACKNEY:
17 Q. Do you have it in front of you?
18 A. Yes.
19 Q. And is that, to the best of your knowledge, a true and
20 accurate copy of the forbearance agreement?
21 A. Yes, it appears to be.
22 Q. Now, if you look at the -- on page 2 of the second
23 full recital?
24 A. Uh-hm.
25 Q. You'll see that it says, "Whereas, pursuant to the

1 A. No, I wouldn't, not without a consulting client and a
2 long compendium of events that occurred before I was
3 appointed.
4 Q. You do know some of them offhand.
5 A. Sure, like the consent agreement, the declaration of
6 financial emergency, the appointment of the financial
7 advisory board, the failure to make some of the --
8 there are a bunch of them, but I couldn't catalog them
9 all.
10 Q. Yeah. Your appointment?
11 A. My appointment. I'm an event of default.
12 Q. You are -- you are an embodiment of default.
13 A. I'm an embodiment of default.
14 Q. So at some point we will have to cure you.
15 A. You will have to talk to my wife about that.
16 Q. Okay. The -- okay. So that is helpful. I was going
17 to go through some of these things, but it doesn't
18 sound like there's an actual dispute between the City
19 and the Swap counterparties on this point, correct?
20 A. No.
21 Q. Now, I want to ask you a different question, though.
22 A. Sure.
23 Q. This is different from what I was just asking, so --
24 A. Okay.
25 Q. As of July 17th, had you evaluated where there were

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1 any termination events where the Swap counterparty was
2 the sole affected party?
3 **MR. SHUMAKER:** Objection, calls for a legal
4 conclusion.
5 **A. Yeah.**
6 **BY MR. HACKNEY:**
7 **Q.** I'm not asking for the advice. I'm asking had you
8 evaluated that.
9 **A. We had evaluated a number of issues and suffice it to**
10 **say that was probably one of them.**
11 **Q.** You can't remember whether it was or it wasn't?
12 **A. I can't remember if --**
13 **Q.** Pretty technical question?
14 **A. Yeah. As I said before, I'm not trying to be evasive.**
15 **It's just that the conversations I have with my**
16 **counsel, investment banker, you know, on a daily**
17 **basis, are -- there are days when there are dozens.**
18 **Q.** Now, if I asked you whether you had evaluated whether
19 there were any events of default under the Swap where
20 the Swap counterparties were the defaulting party --
21 **A. Sure.**
22 **Q.** -- can you answer that question?
23 **A. Whether I personally or whether it had been done on**
24 **the payoff of the team?**
25 **Q. Either.**

1 **question without implicating discussions. No. It**
2 **might -- it might implicate some discussions I had**
3 **with counsel.**
4 **Q.** Okay. Mr. Orr, is the forbearance agreement a
5 settlement?
6 **MR. SHUMAKER:** Objection, calls for a legal
7 conclusion.
8 **A. Let me say this. I'm aware that the motion pending in**
9 **front of the Court is both for -- we call in**
10 **bankruptcy, what I used to call in bankruptcy, both an**
11 **assumption of an agreement and a ^ 9019 settlement.**
12 **BY MR. HACKNEY:**
13 **Q.** So it's been held out by the City as a settlement,
14 correct?
15 **A. Yeah. I think there's a debate as to whether or not**
16 **you need to seek settlement approval in a Chapter 9**
17 **case, but we are.**
18 **Q.** Okay. Does the forbearance agreement settle any
19 claims on a final basis?
20 **A. I think it does.**
21 **Q.** Isn't it true, though, that if the City doesn't
22 exercise the option, everyone goes back to the status
23 quo ante?
24 **A. Yes. That's the contingency, yes.**
25 **Q.** Okay. So if that were to happen, everyone's claims

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1 **A. I personally don't recall doing that. I do recall**
2 **that members of the team and I may have had those**
3 **discussions, yes.**
4 **Q.** Is it fair to say that if I ask you to describe to me
5 what potential events of default or termination events
6 where the Swap counterparties were the sole affected
7 party or the defaulting party --
8 **A. Right.**
9 **Q.** -- you would decline to answer those questions on the
10 basis of the attorney-client privilege?
11 **MR. SHUMAKER:** To the extent they would
12 reveal those communications, of course.
13 **MR. HACKNEY:** Well, I mean --
14 **A. Yes, I would.**
15 **BY MR. HACKNEY:**
16 **Q.** Okay. Even if I ask you about your understanding of
17 the position, your position is that you don't have one
18 independent of your legal advisors.
19 **A. I -- on this question, I don't have one independent of**
20 **my legal advisors.**
21 **Q.** So I can't ask you what your understanding is --
22 **A. Right.**
23 **Q.** -- because it will necessarily reveal the legal advice
24 you got.
25 **A. I'm trying to see if there's a way I can answer your**

1 **would still be in play.**
2 **A. I'm going to be careful with the word claims, but**
3 **everyone would revert back to the status quo ante.**
4 **Q.** Okay. So whatever claims they had at the status quo
5 ante they'd have again?
6 **A. Yeah, whatever claims -- technically, whatever claims,**
7 **colloquially, whatever they had would, revert back to**
8 **the status quo ante.**
9 **Q.** Can we agree that in that eventuality no claims of any
10 of the parties of the forbearance agreement would have
11 been finally resolved by the forbearance agreement?
12 **A. To the best of my knowledge, yes.**
13 **Q.** Now, put aside the threat of declaring an early
14 termination under the Swap --
15 **A. Right.**
16 **Q.** -- which we've discussed extensively today as a right
17 the Swap counterparties have under the Swap --
18 **A. Okay.**
19 **Q.** -- put that aside. Have you evaluated, separate and
20 apart from that, whether there are other tort or
21 contract claims that the Swap counterparties may have
22 against the City?
23 **A. I think there were discussions, but, here again, those**
24 **would be wrapped up in attorney-client communications.**
25 **Q.** So if I asked you to reveal the assessment of whether

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1 there were other claims that the Swap counterparties
2 have against the City, you would decline to answer
3 those questions on the grounds of attorney-client
4 privilege?
5 A. I think I would have to. I do recall discussions, but
6 I think I'd have to decline on the basis of
7 attorney-client privilege.
8 Q. Have the Swap counterparties threatened to bring any
9 claims against the City?
10 A. Well, here again, being careful with the word claims,
11 you mean unrelated to the defaults such as tort
12 claims?
13 Q. I guess I would say the Swap agreement is one you
14 understand that's between the Swap counterparties and
15 the service corporations.
16 A. Right.
17 Q. Okay. So I'm trying to put that in a box for now.
18 A. Right.
19 Q. And we've talked about that extensively.
20 A. Right.
21 Q. So other than any claims they may have against the
22 service corporations --
23 A. Right.
24 Q. -- that could absolutely have implications for the
25 City, but other than that, have the Swap

1 A. No. I don't recall doing that.
2 Q. So you haven't assessed that?
3 A. Not me independently, no.
4 Q. Okay. And it's not something you took into account as
5 part of this agreement?
6 A. No. We -- there was a discussion about the interest
7 of all the parties. I, independently, did not
8 handicap whether the service corporations might bring
9 a claim against the City. I think there were
10 discussions about it. Many of those discussions would
11 have been caught up in the general discussions that I
12 was having with counsel and my other advisors.
13 Q. And you wouldn't be able to discuss them?
14 A. No.
15 Q. But the service corporations' claims against the City,
16 those are not resolved by the forbearance agreement,
17 correct?
18 A. If they have any. I don't think they are.
19 Q. Let me cut to it. Is it fair to say you haven't given
20 this any real consideration?
21 A. Yeah. We -- it is fair to say that it was -- there
22 was no real deep consideration of it. We did consider
23 it.
24 Q. Now, as the City evaluated whether it has claims
25 against the Swap counterparties --

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1 counterparties threatened to bring any other claims
2 directly against the City?
3 A. None that I'm aware of.
4 Q. I may have asked you this earlier, but I just -- I
5 want to make sure that I didn't miss it and so if it's
6 asked and answered I apologize, but did the City
7 evaluate whether it is in breach of the collateral
8 agreement?
9 A. Did we evaluate it?
10 Q. Yeah.
11 A. Yes, I and my consultants evaluated it.
12 Q. Is this one where if I asked you the results of those
13 evaluations you'd decline to answer?
14 A. Yes.
15 Q. It is true that prior to the forbearance agreement,
16 the only direct contractual agreement under which both
17 the City and the Swap counterparties had signed was
18 the collateral agreement, correct?
19 A. To the best of my knowledge, that's correct.
20 Q. Now, have the service corporations threatened to bring
21 any claims against the City?
22 A. None that I'm aware of.
23 Q. And have you undertaken an assessment of the
24 likelihood of the service corporations to the extent
25 they were to assert claims against the City?

1 A. Um-hm.
2 Q. -- okay?
3 A. Um-hm.
4 Q. And if I ask you to tell me what claims you have, will
5 you tell me them or will you assert the privilege?
6 MR. SHUMAKER: I would instruct the witness
7 that may implicate attorney-client communications.
8 A. I would have no independent knowledge of what claims
9 may have other than discussions I've had with counsel
10 so I wouldn't answer.
11 BY MR. HACKNEY:
12 Q. Okay. If I ask you what's the likelihood that you'll
13 win on the claims?
14 A. Same answer.
15 Q. You would follow the advice --
16 A. Yeah.
17 Q. -- and assert the privilege?
18 A. Yeah.
19 Q. Okay.
20 A. In my prior life, as an attorney, likely would be a
21 hundred percent.
22 Q. Okay.
23 A. But I can't say that.
24 Q. Well, let me ask you -- let me ask you just a -- sort
25 of this is your understanding of the forbearance

1 agreement.
2 **A. Right.**
3 Q. What claims are you asking the Court to approve the
4 settlement of?
5 **A. In claims that might be had by the parties vis-à-vis**
6 **each other.**
7 Q. So any and all claims that they have under the Swaps
8 or the collateral agreement or the service contracts
9 or any other contracts --
10 **A. Yes.**
11 Q. -- those claims are being resolved by the forbearance
12 agreement?
13 **A. To the best of my knowledge, that is true.**
14 Q. Okay. And the result of the forbearance agreement is
15 that the City will be able to perform under the
16 forbearance agreement without being subject to any
17 liability to any third party?
18 **A. That is my understanding.**
19 Q. And so will the Swap counterparties, correct?
20 **A. That is my understanding.**
21 Q. It will give you what I'll call a clean closing?
22 **A. As I said earlier this week, it will bring us to**
23 **closure and certainty, yes. Earlier today.**
24 Q. That is also one of the values of this agreement to
25 both and you the Swap counterparties, you the City?

1 lawyer.
2 **A. That's a fair statement.**
3 Q. And isn't it also fair -- I will tell you I have as
4 well, but --
5 **A. Right.**
6 Q. Isn't it common that settlement agreements typically
7 involve releases of liability by the parties against
8 one another?
9 **A. It is not uncommon for there to be releases in**
10 **settlement agreements.**
11 Q. And I will tell you I actually was racking my brain to
12 see whether I ever entered into a settlement agreement
13 that didn't have a release. I couldn't think of one.
14 **Have you ever entered into a settlement agreement that**
15 **didn't have a release?**
16 **A. Yes.**
17 Q. Okay. You have?
18 **A. Yes, I have.**
19 Q. Okay. Do you know whether the forbearance agreement
20 contains a release of claims by the parties against
21 one another?
22 **MR. SHUMAKER:** Objection, calls for legal
23 conclusion.
24 You can answer.
25 **A. Okay. I'd have to read through it and consult with my**

1 **A. Right.**
2 Q. Which is that it absolves you for any liability in
3 connection with the relevant agreements?
4 **MR. SHUMAKER:** Objection to form.
5 **BY MR. HACKNEY:**
6 Q. As a result of performance under the forbearance
7 agreement, correct?
8 **MR. SHUMAKER:** Objection calls for
9 speculation.
10 **A. My understanding is that it provides us with closure**
11 **and finality regarding any claims and relationships**
12 **that the parties have.**
13 **BY MR. HACKNEY:**
14 Q. Okay. And there's no trailing liability?
15 **A. That is correct.**
16 Q. And just for the record, if I asked to you assess the
17 likelihood of success of all of the different claims
18 that are being resolved by the forbearance agreement,
19 you would assert the attorney-client privilege and
20 refuse to answer?
21 **A. That is correct. I have made no independent**
22 **assessment outside of any conversation I would have**
23 **had with counsel and my advisors.**
24 Q. Now, Mr. Orr, I'm going to speculate you may have
25 negotiated a settlement or two in your life as a

1 counsel to make sure. I know the agreement speaks for
2 itself.
3 **BY MR. HACKNEY:**
4 Q. It does, but as you sit here today, I take it you
5 reviewed the forbearance agreement in connection with
6 the preparation for your deposition?
7 **A. Maybe not as in depth as you might think.**
8 Q. Okay. I know you have a lot on your plate.
9 **A. I have a lot on my plate.**
10 Q. But I guess I'm saying are you seriously unaware as to
11 whether there's a release in the forbearance
12 agreement?
13 **A. Seriously or not, I think the forbearance agreement**
14 **resolved all claims between the parties. Sitting here**
15 **today without examining it, I'm not aware as to**
16 **whether or not it specifically has a release.**
17 Q. Okay. So the -- whether it's in the forbearance
18 agreement or in the effect of its approval, it
19 operates as a release for everyone involved?
20 **A. Yeah. The reality is -- when you asked me the**
21 **question before as to whether or not it has a release,**
22 **the reality is that to the extent you asked -- I**
23 **believe in the motion you asked for assumptions and**
24 **9019 settlement that the order might well contain a**
25 **release so -- I wasn't trying to be truculent with**

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1 you. I'm just saying that, yes, the effect of the
2 approval of the agreement should have that impact.
3 Q. I'm not going to try to go claim by claim because your
4 understanding is it releases all claims of the Swap
5 counterparties, the service corporations, and the City
6 against one another?
7 A. Yes.
8 Q. Now, the Swap insurers, as part of the forbearance
9 agreement, they get a release of their insurance
10 obligations under the Swap in the event the City
11 directs an optional termination, correct?
12 A. Yes, I believe that's true.
13 Q. And this was one of the things that the City has
14 touted, which is to say, hey, Swap insurers, pipe down
15 this is good for you, right?
16 MR. SHUMAKER: Objection to form.
17 A. Yeah, without characterizing, you know, the colloquial
18 characterization, yes, we think that's a benefit.
19 BY MR. HACKNEY:
20 Q. That's a concept that you've argued in your papers --
21 A. Yes.
22 Q. -- as to why the Swap insurers should be happy?
23 A. Yes.
24 Q. Now, do you understand you -- you have argued that
25 this is a benefit to the Swap insurers under the

1 under the agreement?
2 A. As a layperson, I really haven't examined it.
3 Q. So don't know one way or the other?
4 A. Don't know one way or the other.
5 Q. Do you have a view as to whether Syncora or FGIC, for
6 that matter, can sue to enforce the agreement?
7 A. I don't have one way or the other.
8 Q. They may have, they may not have?
9 A. Yeah. I'd probably weigh on the side of they don't,
10 but I -- I don't have a view one way or the other.
11 Q. And have you considered the possibility that if they
12 don't have the right to sue to enforce the agreement,
13 that they also would not have the right to sue to
14 enforce the release that's in the agreement?
15 MR. SHUMAKER: Objection --
16 A. They might or they might --
17 MR. SHUMAKER: -- calls for a legal
18 conclusion.
19 A. They might or they might not.
20 BY MR. HACKNEY:
21 Q. And let's be frank. That's not your concern, right?
22 A. Well, to be honest with you, you know, without getting
23 into whether or not there may be equitable rights,
24 estoppel, third party intended, unintended beneficiary
25 rights, things along those lines, what I do know --

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1 forbearance agreement, correct?
2 A. Yes, I believe so.
3 Q. Are the swap insurers third party beneficiaries as you
4 understand it as the signatories to the agreement --
5 of the agreement?
6 MR. SHUMAKER: Objection, calls for a legal
7 conclusion.
8 A. Here, I'm not acting as a lawyer as I understand it.
9 I'll have to decline from answering whether or not
10 they're third party beneficiaries. As you know,
11 they're intended beneficiaries, incidental
12 beneficiaries. A lot of these questions are questions
13 of fact, so that would draw me into a legal analysis
14 and I'll stay away from that.
15 BY MR. HACKNEY:
16 Q. Let me -- let me -- let me -- what I'll do then is
17 I'll ask you your understanding as a layperson --
18 A. Okay.
19 Q. -- because you are -- you can say that you're acting
20 as a layperson --
21 A. I am.
22 Q. -- so to speak.
23 A. Yes.
24 Q. Okay. As a layperson person, do you have a view one
25 way as to whether Syncora is a third party beneficiary

1 incidental benefits -- what I do know is the
2 agreement, and what we've said is it provides a
3 benefit to the insured.
4 Q. That's right, but you obviously don't represent the
5 insured, you represent the City?
6 A. I am employed by the governor on behalf of the City,
7 that is correct.
8 Q. And so if the insurer can't enforce the agreement to
9 take advantage of the release, that's the insurer's
10 problem, correct?
11 A. Well, without characterizing whether or not it's their
12 problem or so, my fiduciary duty runs to the City in
13 its interest; it does not necessarily run to Syncora.
14 Q. Yeah. Can we agree that you certainly didn't
15 negotiate into the agreement any specific provision
16 granting the insurers the right to sue to enforce that
17 provision?
18 A. I made no instruction to my team to negotiate such a
19 provision.
20 Q. In entering into the forbearance agreement, did you
21 consider whether or not the automatic stay would apply
22 to cash trapping if the City filed for bankruptcy?
23 MR. SHUMAKER: Objection, calls for a legal
24 conclusion.
25 A. Without getting -- here again, there were discussions

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1 because, quite frankly, at the time we were in
2 negotiating this agreement in June, we were hoping
3 that this agreement and its announcement was for other
4 creditors to -- and other stakeholders, including the
5 labor side, to come in and negotiate additional
6 agreements. So we may have had discussion about what
7 the impact, if we filed bankruptcy, would have been,
8 but, frankly, at this time we were hoping we were
9 going to get a round of agreements in place.

10 BY MR. HACKNEY:

11 Q. You knew that as of July 15th, when you executed the
12 forbearance agreement, that bankruptcy was possible?

13 A. Oh, sure. We knew it was possible, yeah.

14 Q. Fair to say that by July 15th, given all the work that
15 was going on, you were of the view that it was likely?

16 A. No, not really. We had been sued -- the governor and
17 the treasurer had been sued a few weeks before that.
18 The following week I believe one union had joined in
19 that suit and the Monday of the week after that, the
20 governor and I were sued, and I believe July -- I
21 don't have a calendar. I believe July 15th was that
22 Monday.

23 Q. It was.

24 A. Yes. So we signed this agreement and, frankly, even
25 at that time, because there was a whole lot of things

1 A. No. I -- let's be clear. I think we had them before.
2 I think we had them around that time because in that
3 week, when I was sued that Monday, there were
4 discussions about what they may be and we were signing
5 this agreement at the time.

6 Q. If I ask you about the specifics of the conversations
7 you had about whether the automatic stay applied and
8 the likelihood that it would or wouldn't, you'll
9 decline to answer those questions on the basis of the
10 attorney-client privilege, correct?

11 A. Yes, again, today I would have to do that.

12 Q. The one thing I will say that we can agree on, though,
13 is that if the automatic stay did bar cash trapping,
14 that would be valuable to the City because at least
15 during the pendency of the bankruptcy it would then
16 have access to the casino revenues, correct?

17 A. Well, it's -- here again, it's a hypothetical and
18 contingent question, but I take your meaning, and what
19 I would say is I think certainly one of the benefits
20 of the automatic stay is that you maintain the status
21 quo and access to cash. There are also provisions
22 however in the bankruptcy code -- I'm not acting as an
23 attorney, but I am aware -- of Safe Harbor provisions
24 related to certain financial instruments and you have
25 to factor that in as well.

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1 going on, there was litigation, there were stays in
2 place, there were appeals to the state court, it
3 certainly was possible and we were with doing
4 contingency planning given the paper, but we have not
5 made any determination at that point as to whether or
6 not, excuse me, we were going to file.

7 Q. It was certainly possible enough that it behooved you
8 to analyze whether the automatic stay might be a way
9 to get access to the casino revenues, correct?

10 A. Yeah, I don't recall whether or not we did it then or
11 before or just during that week, but -- but we --
12 there was some discussion about the impact of the
13 automatic stay, yes.

14 Q. So is it possible that you did not evaluate the
15 applicability of the automatic stay in the event of a
16 bankruptcy prior to executing the forbearance
17 agreement?

18 MR. SHUMAKER: Objection --

19 A. No.

20 MR. SHUMAKER: -- asked and answered.

21 A. No. What I said is at some point during that time or
22 even prior we had to have those discussions.

23 BY MR. HACKNEY:

24 Q. You may have had them in advance of July 15th, you may
25 not have, you just can't remember?

1 Q. And those are?

2 COURT REPORTER: Can you please slow down?

3 THE WITNESS: I'm sorry.

4 BY MR. HACKNEY:

5 Q. Those are risk factors that might make the automatic
6 stay not applicable?

7 A. That's correct.

8 MR. SHUMAKER: Objection, calls for a legal
9 conclusion.

10 A. I was informed without telling specific --

11 BY MR. HACKNEY:

12 Q. Right.

13 A. -- conversations that those are issues you have to
14 take into consideration.

15 Q. And so let me try and collapse this if I can. If I
16 ask you about whether the casino revenues are special
17 revenues being applied to indebtedness, you will
18 refuse to answer?

19 MR. SHUMAKER: You can ask him whether he
20 considered them, but in terms of likelihood of success
21 or communication between --

22 BY MR. HACKNEY:

23 Q. I'll do it that way.

24 Did you consider whether there were special
25 revenues that were accepted from the automatic stay

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1 under 922(d)?
 2 **A. We considered all of these issues including the**
 3 **interaction 922(d) with 362 and I considered them in**
 4 **the context with my counsel.**
 5 **Q. Okay. You considered whether 362(b)(17) exception for**
 6 **Swap collateral applied?**
 7 **A. Yes.**
 8 **Q. Did you consider whether the collateral account --**
 9 **rather, the gaming revenues were even property of the**
 10 **estate at all?**
 11 **A. Yes.**
 12 **Q. So you considered all those questions.**
 13 **A. Um-hm.**
 14 **Q. Your counsel rendered advice to you about the**
 15 **likelihood, the pros and cons of the arguments, and**
 16 **you're not at liberty to provide that advice to us**
 17 **because it would invade the attorney-client privilege?**
 18 **A. Yes, I believe that's correct.**
 19 **Q. But I do want to get -- I do want to just get your**
 20 **agreement that the question is important to at least**
 21 **one of the benefits of the forbearance agreement which**
 22 **was the interim access to cash during the optional**
 23 **termination period.**
 24 **A. I think the question is relevant.**
 25 **Q. Yeah.**

1 because you might be able to get longer access to cash
 2 from the automatic stay than you were getting from the
 3 forbearance agreement, correct?
 4 **A. Here again, that's a contingent it might, but that has**
 5 **to be drawn up also in discussion of potential risk**
 6 **that Safe Harbor provision would allow the**
 7 **counterparties to exercise their rights and therefore**
 8 **obviate any benefits the City could receive from the**
 9 **automatic stay.**
 10 **Q. That's right.**
 11 **A. So we considered all of those.**
 12 **Q. So just to be clear, if I ask you about the specific**
 13 **ins and outs of all those potential arguments,**
 14 **likelihoods of success and so forth, you will not**
 15 **answer those questions on the basis of the**
 16 **attorney-client privilege, correct?**
 17 **A. That is correct.**
 18 **Q. Oh, I know. The City recently argued in court against**
 19 **yours truly that the automatic stay bars the cash**
 20 **trapping provisions of the collateral agreement. Are**
 21 **you aware of that?**
 22 **A. I believe I am, yes.**
 23 **Q. Yeah. In fact, I think that your spokesman,**
 24 **Mr. Nowling, may have made statements in the press**
 25 **about the impact of the judge's rulings. Are you**

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1 **A. Yes.**
 2 **Q. In fact the optional termination period, it could end**
 3 **as soon as on September 16th; at the latest it goes to**
 4 **June 30, 2014, right?**
 5 **A. Correct.**
 6 **MR. SHUMAKER: Objection, document speaks**
 7 **for itself.**
 8 **A. Yeah, the document --**
 9 **BY MR. HACKNEY:**
 10 **Q. Whatever it says --**
 11 **A. Yeah.**
 12 **Q. -- that's your understanding?**
 13 **A. Yes.**
 14 **Q. So that -- the forbearance agreement -- let's put it**
 15 **this way, Mr. Orr. The forbearance agreement gets you**
 16 **access to cash during the optional termination period.**
 17 **A. Yes, I believe that's true.**
 18 **Q. If the automatic stay applied, it might get access to**
 19 **the casino revenue during the whole bankruptcy,**
 20 **correct?**
 21 **A. It might.**
 22 **Q. Yeah. We're talking about different things that you**
 23 **consider as you're analyzing your options, right?**
 24 **A. Yeah, correct.**
 25 **Q. And this is -- this is a potentially important one**

1 familiar with those statements?
 2 **A. I am.**
 3 **Q. Did the Swap counterparties give their consent to the**
 4 **City to make those arguments in court?**
 5 **A. I don't know.**
 6 **Q. And -- so you don't know whether they did or they**
 7 **didn't?**
 8 **A. That is correct.**
 9 **Q. You understand that as originally designed the Swaps**
 10 **were designed to hedge against interest rate risk on**
 11 **the floating COPs?**
 12 **MR. SHUMAKER: Objection, calls for a legal**
 13 **conclusion.**
 14 **MR. JURGENS: Objection to form as well.**
 15 **A. That is my understanding.**
 16 **BY MR. HACKNEY:**
 17 **Q. And I can unpack it if you want. I know we get into**
 18 **the --**
 19 **A. That's my understanding.**
 20 **Q. Yeah, okay. Let's just do basics of interest rate**
 21 **risk, which is if the interest rates go above the**
 22 **hedge rate, then now the Swap counterparties have to**
 23 **pay the difference to the service corporations so that**
 24 **they can pay the difference to the floating rate COPs,**
 25 **correct?**

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1 **MR. SHUMAKER:** Objection, form.
 2 **A. That is my understanding.**
 3 **BY MR. HACKNEY:**
 4 **Q.** That's how the hedge works.
 5 Now, interest rates do not favor the City
 6 in the Swaps -- we asked that earlier.
 7 **A. Right.**
 8 **Q.** I will strike that.
 9 But more basics of interest rate hedging,
 10 so as the interest rates go up and start to approach
 11 the hedge, the amount the City owes under the Swap via
 12 service corporations goes down?
 13 **A. That -- that is my understanding.**
 14 **Q.** And as it crosses over the hedge line, the service
 15 corporation could actually be in the money?
 16 **MR. JURGENS:** Objection to form.
 17 **A. Yeah, here again, we had the discussion about in the**
 18 **money or not, but to the extent your point is saying**
 19 **that they would benefit more from the hedge than the**
 20 **counterparties would, that is my understanding.**
 21 **BY MR. HACKNEY:**
 22 **Q.** When the interest rates get above the hedge line?
 23 **A. (Nods head).**
 24 **Q.** That's right.
 25 **Okay.** Now, when you were entering into the

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1 **Q.** Okay. No disrespect to the fine lawyers at Jones Day.
 2 I don't know if I can calculate future interest rates
 3 as a lawyer.
 4 It was in Miller Buckfire's province to do
 5 it. They may have done it in conjunction with Jones
 6 Day?
 7 **A. Yes, yes.**
 8 **Q.** Okay. And any review of forward curves or different
 9 interest rate implications currently existing in the
 10 market would have been done by Miller Buckfire?
 11 **A. Yes.**
 12 **Q.** And your recollection is that it was done and it was
 13 something that you considered as part of the decision
 14 entering into this agreement?
 15 **A. I believe so.**
 16 **Q.** You're aware, for example, that the Federal Reserve
 17 has indicated intent to scale back its monthly bond
 18 purchases?
 19 **A. I heard that.**
 20 **Q.** And --
 21 **A. Quantitative reasoning --**
 22 **Q.** Yeah.
 23 **A. Yeah.**
 24 **Q.** And you're aware that many people believe that that
 25 may lead interest rates to rise; isn't that right?

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1 forbearance agreement on July 17th, what steps did you
 2 take personally to evaluate future -- I'm sorry. I
 3 misspoke, didn't I?
 4 **A. Yeah.**
 5 **Q.** When you entered into the forbearance agreement on
 6 July 15th --
 7 **A. Right.**
 8 **Q.** -- what steps did you take prior to that time to
 9 evaluate future interest rate moves?
 10 **A. Any discussions in those -- that regard would have**
 11 **been with our investment bankers and generally with**
 12 **our attorneys. What I'm trying to think of is were**
 13 **there any discussions that I had with Miller Buckfire**
 14 **which would not have been confidential in that regard.**
 15 **I don't think that there were. What I can say is that**
 16 **we evaluated the potentiality of the -- of the**
 17 **interest rate fluctuation as indexed to LIBOR going up**
 18 **or down, but I think most of those, if not all of**
 19 **them, were in communications with one or more of my**
 20 **attorneys.**
 21 **Q.** And when you say we evaluated the interest rate
 22 fluctuations, that would have been tasked to Miller
 23 Buckfire to do?
 24 **A. Yes, Miller Buckfire in conjunction with folks from**
 25 **Jones Day. Yeah, sure.**

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1 **A. Yes.**
 2 **Q.** Okay. Did you analyze the likelihood that the
 3 interest rates would rise or was that also tasked to
 4 Miller Buckfire?
 5 **A. I didn't do it independently. That would have been**
 6 **tasked to Miller Buckfire.**
 7 **Q.** And if I asked what that analysis showed, I would have
 8 to ask Mr. Buckfire that?
 9 **A. Yes, you would.**
 10 **Q.** Okay.
 11 **A. Yes, you would.**
 12 **Q.** Let me ask you about -- in the motion to assume the
 13 forbearance agreement, the City states that it has
 14 examined whether there are viable actions to challenge
 15 the Swap contracts. Do you recall that?
 16 **A. Yes.**
 17 **Q.** Under what theory could the City challenge the
 18 validity of the Swap contracts?
 19 **A. Any theories that we discussed -- I'll give you two**
 20 **answers. One, many of the theories, my understanding**
 21 **is and somebody -- I haven't read all of the**
 22 **objections, but I've read some of them. Some of the**
 23 **objections in this case have discussed some of those**
 24 **theories.**
 25 **Two, any theories which we would have**